## AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

<table>
<thead>
<tr>
<th>1. AMENDMENT/MODIFICATION NO</th>
<th>2. EFFECTIVE DATE</th>
<th>3. REQUISITION/PURCHASE REQ. NO.</th>
<th>4. PROJECT NO. (if applicable)</th>
<th>5. CONTRACT ID CODE</th>
<th>6. PAGE OF PAGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>0798</td>
<td>See Block 16C</td>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
</tbody>
</table>

### ARGONNE SITE OFFICE

12/01/2017

Digitally signed by Fausto Fernandez
DN: c=us, o=u.s. government, ou=department of energy, ou=Energy IT Services, ou=Chicago Office, ou=Resources, cn=Fausto Fernandez
Date: 2017.12.01 09:54:08 -06'00'

### NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)

UCHICAGO ARGONNE, LLC
Attn: DIANE HART
9700 S CASS AVE
LEMONT IL 604394803

### FACILITY CODE

| CODE                  | 62444996B |

### DATE SIGNED

07/31/2006

### AMENDMENT OF SOLICITATION NO.

1A. AMENDMENT OF SOLICITATION NO.

1B. DATED (SEE ITEM 11)

10A. MODIFICATION OF CONTRACT/ORDER NO.

DE-AC02-06CH11357

10B. DATED (SEE ITEM 13)

### 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 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 ACKNOWLEDGMENT 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 you are the offeror, 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.

### ACCOUNTING AND APPROPRIATION DATA (if required)

See Schedule

### THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACT/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 43.102(b).

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:

D. OTHER (Specify type of modification and authority)

X SEE PAGE 3 — TABLE OF CHANGES

### IMPORTANT:

Contractor  ☐ is not, ☑ is required to sign this document and return 1 copies to the issuing office

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

SEE PAGE 3 — TABLE OF CHANGES.

### INFORMATION LISTED BELOW IS AUTO-GENERATED CONTENT BY STRIPES:

#### LIST OF CHANGES:
Reason for Modification: Supplemental Agreement for work within scope
Period of Performance End Date changed from 30-SEP-20 to 30-SEP-21
CHANGES FOR LINE ITEM NUMBER: 1
End Date changed from 30-SEP-20 to 30-SEP-21

### Continued...

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as hereafter changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)

Eric D. Isaacs, Chief Executive Officer

15C. DATE SIGNED

12/01/2017

16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)

Fausto R. Fernandez

16C. DATE SIGNED

STANDARD FORM 30 (REV. 10-63)

Prescribed by GSA
FAR (48 CFR) 53.243

NSN 7540-01-152-8070

Previous edition unsuitable
<table>
<thead>
<tr>
<th>ITEM NO. (A)</th>
<th>SUPPLIES/SERVICES (B)</th>
<th>QUANTITY (C)</th>
<th>UNIT (D)</th>
<th>UNIT PRICE (E)</th>
<th>AMOUNT (F)</th>
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<tr>
<td></td>
<td>FOB: Destination</td>
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<tr>
<td></td>
<td>Period of Performance: 10/01/2006 to 09/30/2021</td>
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</table>
### AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

<table>
<thead>
<tr>
<th>1. CONTRACT ID CODE</th>
<th>PAGE OF PAGES</th>
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<th>5. PROJECT NO. (If applicable)</th>
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<td>See Block 16C</td>
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<th>6. ISSUED BY CODE</th>
<th>7. ADMINISTERED BY (If other than Item 6) CODE</th>
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<tbody>
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</tbody>
</table>

Argonne Site Office  
U.S. Department of Energy  
Argonne Site Office  
9800 South Cass Avenue  
Argonne IL 60439

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)  

UCHICAGO ARGONNE, LLC  
Attn: DIANE HART  
9700 S CASS AVE  
LEMON ILL 604394803

<table>
<thead>
<tr>
<th>8A. AMENDMENT OF SOLICITATION NO.</th>
<th>9A. MODIFICATION OF CONTRACT/ORDER NO.</th>
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<tbody>
<tr>
<td></td>
<td>DE-AC02-06CH11357</td>
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9B. DATED (SEE ITEM 11)  

<table>
<thead>
<tr>
<th>10A. MODIFICATION OF CONTRACT/ORDER NO.</th>
</tr>
</thead>
<tbody>
<tr>
<td>DE-AC02-06CH11357</td>
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</table>

10B. DATED (SEE ITEM 13)  

<table>
<thead>
<tr>
<th>11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
</tr>
</tbody>
</table>

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)

See Schedule

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

CHECK ONE
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.

<table>
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<tr>
<th>14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)</th>
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</thead>
<tbody>
<tr>
<td>SEE PAGE 3 - TABLE OF CHANGES</td>
</tr>
</tbody>
</table>

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INFORMATION LISTED BELOW IS AUTO-GENERATED CONTENT BY STRIPES:

LIST OF CHANGES:
Reason for Modification: Supplemental Agreement for work within scope  
Period Of Performance End Date changed from 30-SEP-20 to 30-SEP-21  
CHANGES FOR LINE ITEM NUMBER:  1  
End Date changed from 30-SEP-20 to 30-SEP-21

Continued ...

Except as provided herein, all terms and conditions of the document referenced in Item 9 A or 10A, as heretofore changed, remains unchanged and in full force and effect.

16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)  
Fausto R. Fernandez

16B. UNITED STATES OF AMERICA  
Signature on File  
12/01/2017

16C. DATE SIGNED

---
FOB: Destination  
Period of Performance: 10/01/2006 to 09/30/2021
13. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
   • MUTUAL AGREEMENT OF THE PARTIES
   • CLAUSE F.2 – AWARD TEM INCENTIVE (SPECIAL)

14. DESCRIPTION OF AMENDMENT/MODIFICATION continued.

   A. This modification is issued to update the following contract Sections:

   i. Part I, Section B – Supplies or Services and Prices/Costs
   ii. Part I, Section F – Deliveries or Performance
   iii. Part I, Section H – Special Contract Requirements
   iv. Part II, Section I – Contract Clauses
   v. Part III, Section J – Appendix A – Advance Understandings on Human Resources
   vi. Part III, Section J – Appendix H – Small Business Subcontracting Plan
   vii. Part III, Section J – Appendix I – DOE Directives/ List B

   B. Table of Changes

   **PART I. SECTION B – SUPPLIES OR SERVICES AND PRICES/COSTS**

<table>
<thead>
<tr>
<th>Clause No.</th>
<th>Title</th>
<th>Change &amp; Explanation</th>
</tr>
</thead>
</table>
   | B.3        | Performance and Other Incentives | Change:
   |            |       | **Paragraph B:** is revised to include the additional fee period through September 30, 2021 with its appropriate award fee amounts. |
   |            |       | **Paragraph C:** is revised to remove the definitized periods of October 1, 2020 through September 30, 2021. Additionally, language is included to notify that the FY 2022 – FY 2026 maximum available performance fee pool will be established in the future. |
   |            |       | **Explanation:** Per FY 2016 Award Term Decision Document. |

   **PART I. SECTION F – DELIVERIES OR PERFORMANCE**

<table>
<thead>
<tr>
<th>Clause No.</th>
<th>Title</th>
<th>Change &amp; Explanation</th>
</tr>
</thead>
</table>
   | F.1        | Period of Performance | Change:
   |            |             | Period of Performance end date is revised from September 30, 2020 to September 30, 2021. |
   |            |             | **Explanation:** Per FY 2016 Award Term Decision Document |
### PART I, SECTION H – SPECIAL CONTRACT REQUIREMENTS

<table>
<thead>
<tr>
<th>Clause No.</th>
<th>Title</th>
<th>Change &amp; Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>H.22</td>
<td>Employee Compensation: Pay and Benefits</td>
<td>Change: The clause is deleted and replaced in its entirety.</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Explanation:</strong> DOE Acquisition Letter 2018-02 – Employee Benefits Cost Study</td>
</tr>
<tr>
<td>H.45</td>
<td>Management and Operating Contractor (M&amp;O) Subcontract Reporting</td>
<td>Change: The clause is deleted and replaced in its entirety.</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Explanation:</strong> DOE Acquisition Letter 2018-04 – Management &amp; Operating Contractor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Subcontract Reporting Capability (MOSRC) with Corporate “H” Clause</td>
</tr>
</tbody>
</table>

### PART II, SECTION I – CONTRACT CLAUSES

<table>
<thead>
<tr>
<th>Clause No.</th>
<th>Title</th>
<th>Change &amp; Explanation</th>
</tr>
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<tbody>
<tr>
<td>1.80</td>
<td>DEAR 952.209.72 Organizational Conflicts of Interest</td>
<td>Change: Paragraph (b)(1)(i) is updated to include a three year ineligibility to</td>
</tr>
<tr>
<td></td>
<td></td>
<td>participate in any capacity in Department contracts, subcontracts, or proposals</td>
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<tr>
<td></td>
<td></td>
<td>therefore (solicited and unsolicited) which stem directly from the Contractor's</td>
</tr>
<tr>
<td></td>
<td></td>
<td>performance of work under this contract.</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Explanation:</strong> The specific terms was inadvertently left blank.</td>
</tr>
<tr>
<td>1.100</td>
<td>DEAR 970.5215-1 Total Available Fee: Base Fee Amount and</td>
<td>Change: Clause is updated to remove Alternate III and replace it with Alternate IV.</td>
</tr>
<tr>
<td></td>
<td>Performance Fee Amount</td>
<td>As a result Paragraph (f), Contractor Self-Assessment, is deleted and replace in its</td>
</tr>
<tr>
<td></td>
<td></td>
<td>entirety with Alternate IV Paragraph (f).</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Explanation:</strong> During the Office of Science (SC) field managers’ meeting of May 3,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2011, SC decided to remove from its national laboratory management and operating (M&amp;O)</td>
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<tr>
<td></td>
<td></td>
<td>contracts the requirement for Contractors to provide the Department of Energy (DOE)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>with annual self-assessments of their performance in operating the laboratories.</td>
</tr>
<tr>
<td>1.126</td>
<td>DEAR 970.5232-4 Obligation of Funds</td>
<td>Change: The amount presently obligated by the Government with respect to this contract</td>
</tr>
<tr>
<td></td>
<td></td>
<td>is changed from $7,753,623,995.33 to $8,153,300,573.74.</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Explanation:</strong> FY 2017 AFP No. 14 through FY 2018 AFP No. 26</td>
</tr>
</tbody>
</table>
PART III, SECTION J – APPENDIX A – ADVANCED UNDERSTANDINGS ON HUMAN RESOURCES

Change:
Appendix A is deleted and replace in its entirety.

Explanation:
- DOE Acquisition Letter 2018-02 – Employee Benefits Cost Study

PART III, SECTION J – APPENDIX H – SMALL BUSINESS SUBCONTRACTING PLAN

Change:
Appendix A is deleted and replace in its entirety.

Explanation:
New FY 2018 Small Business Subcontracting Plan.

PART III, SECTION J – APPENDIX I – DOE DIRECTIVES/ LIST B

<table>
<thead>
<tr>
<th>Order No.</th>
<th>Title</th>
<th>Change &amp; Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>O 413.3B</td>
<td>Program and Project Management for the Acquisition of Capital Assets</td>
<td>Change: This minor change raises the Order’s applicability threshold to greater than $50M, except in cases where Under Secretaries choose to reduce the threshold to $10M for nuclear projects or complex first-of-a-kind projects. The minor change also clarifies that only the High-Performance Computing (HPC) related facility construction and facility improvement activities of HPC projects will be subject to the Earned Value Management (EVM) requirements. Reference letter dated October 24, 2017 from F. Fernandez to P. Kearns; Subject: DOE 413.3B, CH 4 (Min Chg), “PROGRAM MANAGEMENT FOR THE ACQUISITION OF CAPITAL ASSETS,” OCTOBER 13, 2017.</td>
</tr>
</tbody>
</table>
| P 485.1   | Foreign Engagements with DOE National Laboratories                    | Change: New DOE Policy

Explanation:
- SC/PG-2017-02

C. ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

END OF MODIFICATION
SOLICITATION, OFFER AND AWARD

1. THIS CONTRACT IS RATED ORDER UNDER FAR-16 FRP 7000.
2. CONTRACT NO.: DE-RP02-06CH11357
3. SOLICITATION NO.: DE-RP02-06CH11357
4. TYPE OF SOLICITATION: SEALED BID (FBF)
5. DATE ISSUED: 02-06CH11357.000
6. REQUISITION PURCHASE NO.:

ISSUED BY
U.S. Department of Energy
Chicago Office
9800 South Cass Avenue
Argonne, Illinois 60439

RATING
N/A

PAGE OF
1

PAGE(S)
1

NOTE: In noted bid solicitations "offer" and "offeree" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and 4 copies shall be furnished the supplies or services in the Schedule will be received at the place specified in item 6, or if last carried in, in the depositary located in See Section L.14 until 4:30 pm (local time) 06/01/06 (date).

CAUTION/LATE Submissions, Modifications, and Withdrawals: See Section L. Provision No. 2.214.7 or 2.215.1. All offers are subject to all terms and conditions in this solicitation.

G. INFORMATION CALL
A. NAME
Jodi VonRox

B. TELEPHONE NO. (3rd CIC/X X CALLS)
630/252-2776
C. E-Mail Address:
jodivonrox@dn doe go

10. TABLE OF CONTENTS

<table>
<thead>
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<th>20. SECTION</th>
<th>DESCRIPTION</th>
<th>PAGE(S)</th>
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<tbody>
<tr>
<td>21. n.</td>
<td>A. Solicitation/Contract Form</td>
<td>1</td>
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<tr>
<td>22. n.</td>
<td>B. Supplies of Services and Prices/Contracts</td>
<td>2</td>
</tr>
<tr>
<td>23. n.</td>
<td>C. Descriptions/Specs/Work Statement</td>
<td>3</td>
</tr>
<tr>
<td>24. n.</td>
<td>D. Packaging and Marking</td>
<td>4</td>
</tr>
<tr>
<td>25. n.</td>
<td>E. Inspection and Acceptance</td>
<td>5</td>
</tr>
<tr>
<td>26. n.</td>
<td>F. Deliveries or Performance</td>
<td>6</td>
</tr>
<tr>
<td>27. n.</td>
<td>G. Contract Administration/Contractor/Any</td>
<td>7</td>
</tr>
<tr>
<td>28. n.</td>
<td>H. Special Contract Requirements</td>
<td>8</td>
</tr>
</tbody>
</table>

OFFER (Must be fully completed by Offeror)

12. In compliance with the above, the undersigned agree if this offer is accepted within 172 calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT
14. ACKNOWLEDGMENT OF AMENDMENTS
15. NAME AND ADDRESS OF OFFEROR

16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)
Thomas F. Rosenbaum
Chief Executive Officer

UChicago Argonne, LLC
Chicago, IL 60637

17. SIGNATURE

18. OFFER DATE
June 2, 2008

19. ACCEPTED AS TO ITEMS NUMBERED
20. AMOUNT
21. ACCOUNTING AND APPROPRIATION

22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION

23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)

24. ADMINISTERED PERSON (Other than item 7)

25. PAYMENT WILL BE MADE BY
See Clause 1.124

26. CODE

27. UNITED STATES OF AMERICA

Sergio E. Martinez

28. AWARD DATE

IMPROVED - Award will be made on this Form or on Contract No A02-06CH11357.

AUTHORIZED FOR LOCAL REPRODUCTION
Authorized by GSA - Far 51.2146(2) Rev. 8/10
Authorized by Local Agency
Previous edition not usable

Prepared by GSA - FAR 51.214(2)
# PART I

## SECTION B

**SUPPLIES OR SERVICES AND PRICES/COSTS**

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<th>CLAUSE NO.</th>
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<th>PAGE NO.</th>
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<td>B.1</td>
<td>SERVICE BEING ACQUIRED (REVISED 10/1/2006 – M0000)</td>
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<tr>
<td>B.2</td>
<td>OBLIGATION OF FUNDS AND FINANCIAL LIMITATIONS (REVISED 10/1/2006 – M0000)</td>
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<tr>
<td>B.3</td>
<td>PERFORMANCE AND OTHER INCENTIVE FEES (REVISED 12/01/2017 – M0798)</td>
<td>1</td>
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<tr>
<td>B.4</td>
<td>ALLOWABILITY OF SUBCONTRACTOR FEE (REVISED 10/1/2006 – M0000)</td>
<td>3</td>
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<tr>
<td>B.5</td>
<td>PROVISIONAL PAYMENT OF PERFORMANCE FEE (REVISED 10/1/2006 – M0000)</td>
<td>3</td>
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</tbody>
</table>
PART I

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 - SERVICE BEING ACQUIRED (REVISED 10/1/2006 – M0000)

The Contractor shall provide the personnel, facilities, equipment, materials, supplies, and services, (except such facilities, equipment, materials, supplies and services as are furnished by the Government) necessary to perform the requirements and work set forth in this Contract, and shall perform such requirements and work in a quality, timely, and cost-effective manner.

B.2 - OBLIGATION OF FUNDS AND FINANCIAL LIMITATIONS (REVISED 10/1/2006 – M0000)

The amount presently obligated by the Government with respect to this contract is specified in Clause I.126 - DEAR 970.5232-4 - Obligation of Funds (DEC 2000). Other financial limitations are also specified in Clause I.126 - DEAR 970.5232-4 - Obligation of Funds (DEC 2000).

B.3 - PERFORMANCE AND OTHER INCENTIVE FEES (REVISED 12/01/2017 – M0798)

a. The transition activities shall be performed on a cost-reimbursement basis up to the amount specified in Clause H.33, Activities During Contract Transition, paragraph (d), and no fee shall be paid for these activities.

b. In implementation of Clause I.100, Total Available Fee: Base Fee Amount and Performance Fee Amount, the Parties have agreed that the maximum available performance fees that may be earned by the Contractor in accordance with the provisions of Appendix B, Performance Evaluation and Measurement Plan, for the performance of the work under this contract commencing October 1, 2006 are as follows:

1. October 1, 2006 through September 30, 2007 - $5.3 Million
2. October 1, 2007 through September 30, 2008 - $5.3 Million
3. October 1, 2008 through September 30, 2009 - $5.3 Million
4. October 1, 2009 through September 30, 2010 - $5.3 Million
5. October 1, 2010 through September 30, 2011 - $5.3 Million
6. October 1, 2011 through September 30, 2012 - $5.3 Million
7. October 1, 2012 through September 30, 2013 - $5.3 Million
8. October 1, 2013 through September 30, 2014 - $5.3 Million
9. October 1, 2014 through September 30, 2015 - $5.3 Million
10. October 1, 2015 through September 30, 2016 - $5.3 Million
11. October 1, 2016 through September 30, 2017 - $5,820,039.00
12. October 1, 2017 through September 30, 2018 - $5,820,039.00
13. October 1, 2018 through September 30, 2019 - $5,820,039.00
14. October 1, 2019 through September 30, 2020 - $5,820,039.00
15. October 1, 2020 through September 30, 2021 - $5,820,039.00

c. If DOE determines that the Contractor has earned any Award Term after September 30, 2021, in accordance with the provisions of Clause F.2 – Award Term Incentive, the Parties have agreed that the maximum available annual performance fee that may be earned by the Contractor shall be:

*To be determined during the FY 2022 – FY 2026 establishment of the maximum available performance fee pool*

d. The maximum available annual performance fee that may be earned by the Contractor for any additional extensions of the period of performance beyond said five years shall be subject to negotiation between the Parties consistent with the Department of Energy Acquisition Regulation (DEAR) in effect at the time the fee is negotiated.

e. At the end of each fiscal year, there shall be no adjustment in the amount of the maximum available performance fee based on differences between any estimate of cost for performance of the work and the actual cost for performance of the work. Fee is subject to adjustment only –

1. under the provisions of Clause I.134, Changes; or other contract provisions;
or
2. for a +/- 10 percent change in the estimated fee base of $669,692,241.00.

f. Any adjustment in the amount of the fee under the provisions of paragraph (e) for the fees specified in paragraphs (b) and (c) above, or negotiation of fee under paragraph (d) above, shall take into consideration the ratio (see equation below) between the Contractor’s fee specified in paragraphs (b) and (c) above of the original contract and the maximum fees specified in Section L.9(c) of the Request for Proposal No. DE-AC02-06CH11357. The revised fee will be calculated in accordance with the fee policy then in effect, utilizing the adjusted fee base, while maintaining the ratio described above.

\[
\text{Maximum Available Performance Fee for Applicable Year of paragraph (b) or (c)} \div \$5,820,039.00 = \text{Ratio}
\]
B.4 - ALLOWABILITY OF SUBCONTRACTOR FEE (REVISED 10/1/2006 – M0000)

If the Contractor is part of a consortium, joint venture, and/or other teaming arrangement, the team shall share in this Contract fee structure and separate additional subcontractor fee for teaming partners shall not be considered an allowable cost under the contract. If a subcontractor, supplier, or lower-tier subcontractor is a wholly owned, majority owned, or affiliate of any team member, any fee or profit earned by such entity shall not be considered an allowable cost under this contract unless otherwise approved by the Contracting Officer.

B.5 - PROVISIONAL PAYMENT OF PERFORMANCE FEE (REVISED 10/1/2006 – M0000)

The Contractor may, subject to the approval of the Contracting Officer, be paid provisional performance fee payments consistent with the provisions of the clause in Section I entitled, "Payments and Advances." The Contractor shall promptly refund to the Government any amount of provisional performance fee paid that exceeds the amount of performance fee earned.
# PART I

## SECTION C

### DESCRIPTIONS/SPECIFICATIONS/WORK STATEMENT

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PART I

SECTION C

DESCRIPTIONS/SPECIFICATIONS/WORK STATEMENT

C.1 – INTRODUCTION (REVISED 10/1/2006 – M0000)

This Performance-Based Management Contract (PBMC) is for the management and operation of the Argonne National Laboratory (ANL) (the Laboratory). The Contractor shall, in accordance with the provisions of this contract, accomplish the missions and programs assigned by the U.S. Department of Energy (DOE) and manage and operate the Laboratory. The Laboratory is one of the DOE’s Office of Science (SC) multi-program laboratories. The Laboratory is a Federally Funded Research and Development Center (FFRDC) established in accordance with the Federal Acquisition Regulation (FAR) Part 35 and operated under this management and operating (M&O) contract, as defined in FAR 17.6 and DEAR 917.6.

This contract reflects the Department’s effort to enable the Contractor to achieve more highly effective and efficient management of the Laboratory, outstanding science and technology results in a safe and secure environment, more cost effective operations, and enhanced Contractor accountability. Toward this end, this contract establishes a process for minimizing the use of unnecessary DOE orders by tailoring existing and new orders that will enable the Contractor to propose alternate standards, which rely primarily on state and federal laws and regulations, and management processes based on national standards, certified systems and best business practices. Contractor managers shall be held more accountable for maintaining risk mitigation as Laboratory processes and assurance models change.

This contract reflects the application of performance-based contracting approaches and techniques which emphasize results/outcomes and minimize “how to” performance descriptions. The Contractor has the responsibility for total performance under the contract, including determining the specific methods for accomplishing the work effort, performing quality control, and assuming accountability for accomplishing the work under the contract. Accordingly, this PBMC provides flexibility, within the terms and conditions of the contract, to the Contractor in managing and operating the Laboratory.

Desired results of this contract include improved Contractor operational efficiencies, allocations of Contractor resources to ensure effective planning, direction, and implementation of mission work, and streamlined and more effective federal line management focused on a system-based approach to federal oversight with increased reliance on the results obtained from certified, nationally recognized experts and other independent reviewers. Moreover, science and technology have improved peer review metrics and incentives to achieve extraordinary results.
Under this PBMC, it is the Contractor’s responsibility to develop and implement innovative approaches and adopt practices that foster continuous improvement in accomplishing the mission of the Laboratory. DOE expects the Contractor to produce effective and efficient management structures, systems, and operations that maintain high levels of quality and safety in accomplishing the work required under this contract, and that to the extent practicable and appropriate, rely on national, commercial, and industrial standards that can be verified and certified by independent, nationally recognized experts and other independent reviewers. The Contractor shall conduct all work in a manner that optimizes productivity, minimizes waste, and fully complies with all applicable laws, regulations, and terms and conditions of the contract.

To the maximum extent practical, this PBMC shall:

a. Describe the requirements in terms of outcome or results required rather than the methods of performance of the work;

b. Use a limited number of systems-based measurable performance standards (i.e., terms of quality, timeliness, quantity, etc.) to drive improved performance and increased effective and efficient management of the Laboratory;

c. Provide for appropriate financial incentives (e.g., fee) when performance standards and contract requirements are achieved;

d. Specify procedures for reduction of fee when services are not performed or do not meet contract requirements; and

e. Include non-financial performance incentives where appropriate.

C.2 – IMPLEMENTATION OF DOE’S MISSION FOR ANL (REVISED 10/1/2006 – M0000)

The Contractor shall develop a compelling plan to implement the DOE’s SC strategic mission for the Laboratory, as defined below in C.4(b)(1) “Laboratory Mission.” Within this Plan, the Contractor will map the Laboratory’s core competencies to this Laboratory mission. The Contractor will highlight the unique roles the Laboratory fills in SC’s capability to accomplish its missions and, more broadly, that of the Department. Upon approval by the Department, the Plan shall be updated in accordance with instructions to be issued by the Argonne Site Office (ASO) Manager.

The Performance Evaluation and Measurement Plan, as called for within the clause entitled, “Standards of Contractor Performance Evaluation”, identifies performance goals, objectives, measures, and targets which are updated and agreed upon by the Parties annually, as standards against which the Contractor's overall performance of scientific, technical, operational, and/or managerial obligations under this contract shall be assessed.
C.3 - PERFORMANCE EXPECTATIONS, OBJECTIVES, AND MEASURES
(REVISED 10/1/2006 – M0000)

C.3.1 - Core Expectations

C.3.1.1 – General

The relationship between DOE and its national laboratory management and operating contractors is designed to bring best practices for research and development to bear on the Department’s missions. Through application of these best practices, the Department seeks to assure both outstanding programmatic and operational performance of today’s research programs and leadership to assure the relevance to DOE’s mission needs, the productivity and quality of its programs to lead the world in meeting tomorrow’s needs. Accordingly, DOE has substantial expectations of the Contractor in the areas of: program delivery and mission accomplishment; laboratory stewardship; and excellence in laboratory operations and financial management.

C.3.1.2 - Program Development and Mission Accomplishment

The Contractor is expected to provide the highest quality of planning, management, and execution of assigned research and development programs. The Contractor is expected to execute assigned programs so as to achieve the greatest possible impact on DOE’s mission objectives, to aggressively manage the Laboratory’s science and technology capabilities and intellectual property to meet these objectives, and to initiate innovative concepts and research proposals that are in concert with DOE missions. The Contractor shall propose work that will advance DOE’s mission objectives and that is aligned to Laboratory capabilities. The Contractor shall strive to meet the highest standards of scientific quality and productivity, “on-time, on budget, as-promised” delivery of program deliverables, and first-rate service to the research community through user facility operation.

The Contractor is expected to demonstrate benefit to the nation from R&D investments by transferring technology to the private sector and supporting excellence in science and mathematics education consistent with achieving continuous progress towards DOE’s core missions.

C.3.1.3 - Laboratory Stewardship

The Contractor is expected to be an active partner with DOE in assuring that the Laboratory is renewed and enhanced to meet future mission needs. Within the constraints of available resources and other Contract requirements, the Contractor, in partnership with DOE, shall:
a. Maintain an understanding of DOE’s evolving Laboratory vision and long-term strategic plan. Address the co-evolution of Laboratory capabilities to meet anticipated DOE and national needs.
b. Attract, develop, and retain an outstanding work force, with the skills and capabilities to meet DOE’s evolving mission needs.
c. Renew and enhance research facilities and equipment so that the Laboratory remains at the state-of-the-art over time and is well-positioned to meet future DOE needs.
d. Build and maintain a financially viable portfolio of research programs that generates the resources required to renew and enhance Laboratory research capabilities over time.
e. Maintain a vibrant relationship with the broader research community, to enhance the intellectual vitality and research relevance of the Laboratory, and to bring the best possible capabilities to bear on DOE mission needs through partnerships.
f. Build a positive, supportive relationship founded on openness and trust with the community and region in which the Laboratory is located.

C.3.1.4 - Operational and Financial Management Excellence

The Contractor is expected to effectively and efficiently manage and operate the Laboratory through best-in-class management practices designed to foster world-class research while assuring the protection and proper maintenance of DOE research and information assets, the health and safety of Laboratory staff and the public, and the environment. The Contractor is expected to operate the Laboratory so as to meet all applicable laws, regulations, and requirements. The Contractor is expected to manage the Laboratory cost-effectively, while providing the greatest possible research output per dollar of research investment, and, accordingly, to develop and deploy management systems and practices that are designed to enhance research quality, productivity, and mission accomplishment consistent with meeting operational requirements.

C.3.2 - Performance Evaluation Expectations

The performance expectations of this contract are broadly set forth in this Section and reflect the DOE’s minimum needs and expectations for Contractor performance. Specific performance work statements, performance standards (measures applied to results/outputs), acceptable performance levels (performance expectations), acceptable quality levels (permissible deviations from performance expectations), and related incentives shall be established annually, or at other such intervals determined by the DOE to be appropriate. The related incentives may be monetary, or where monetary incentives are not desirable or considered effective, the Contractor’s performance may be used as a factor which directly affects the past performance report card, or a factor in a decision to reduce or increase DOE oversight or Contractor reporting, as appropriate.
In performance under this contract, the Contractor shall be evaluated within the following general performance goals and expectations:

a. Science and Technology (S&T) - The Contractor will deliver innovative, forefront science and technology aligned with DOE strategic goals in a safe, environmentally sound, and efficient manner, and will conceive, design, construct, and operate world-class user facilities.

1. Mission Accomplishment (Quality and Productivity of R&D): The Contractor shall produce high-quality, original, and creative scientific results that demonstrate sustained scientific and technological progress and impact, while receiving appropriate external recognition of accomplishments. The Contractor shall also contribute to overall research and development goals of the Department and its customers. Important performance factors for the research and development are: overall productivity/output; impact including the significance of the R&D; leadership including recognition of Science and Technology accomplishments; and delivery including timeliness such as meeting milestones, goals, and other commitments.

2. Construction and Operation of Research Facilities: The Contractor shall develop, construct and operate research facilities and equipment that are needed to insure the Laboratory can meet its S&T missions today and in the future, while effectively and efficiently maintaining current S&T facilities and equipment and providing effective, efficient operation of user facilities to maximize the value of facilities. Important performance factors are: meeting construction schedules, budgets, performance specifications and objectives; operating the facilities reliably, cost effectively, and ensuring that the facilities are available when needed; providing high utilization by providing a science and technology foundation to maximize the value of the facility; and leveraging the facilities by making them available for other customers.

3. Project/Program Management: The Contractor shall provide for effective and efficient stewardship of resources and capabilities, through expert planning, delivery, and risk management. Important performance factors are: establishing a Laboratory vision that includes maintaining key competencies to support research programs and making quality hires; planning including high quality research plans, adequate consideration of technical risks, success in identifying and avoiding/overcoming technical problems and the ability to take advantage of new opportunities; and linking financial data to effective decision making and redirecting resources/projects in response to changing conditions.

b. Contractor Leadership/Stewardship - The Contractor shall provide for the effective and efficient management and operation of the Laboratory through a
strategic vision and effective planning to assure the Laboratory mission is accomplished. Important performance factors are: Laboratory-wide strategic vision and effective planning including the creation of partnerships and alliances, selection of Laboratory priorities and culture, educational programs, technology transfers, and developing a working relationship with the local community; responsiveness and accountability; and corporate involvement/contributions including joint appointments, innovative financing proposals, infrastructure support and an overall investment in the success of the Laboratory.

C.3.3 - Performance Objectives and Measures

The results-oriented performance objectives of this contract are stated in the Performance Evaluation and Measurement Plan (PEMP)(Appendix B), and/or in the Work Authorization Directives issued annually in accordance with the special clause entitled, “Long-Range Planning, Program Development and Budgetary Administration”. The Contractor shall develop a five-year Plan for the overall direction of the Laboratory and for the accomplishment of these objectives. The Plan shall be actively maintained and annually updated in accordance with instructions issued by the DOE Site Manager. The objectives shall be accomplished within an overall framework of management and operational performance requirements and standards contained elsewhere in this contract. To the maximum extent practicable, these requirements and standards have also been structured to reflect performance-based contracting concepts, including the clause entitled, “Application of DOE Contractor Requirement Documents”, which permits the Contractor to propose to the Contracting Officer alternative and/or tailored approaches based on national, commercial or industrial standards and best business practices to meet the outcomes desired by the Government.

DOE’s Quality Assurance/Surveillance Plan (QASP) for evaluating the Contractor’s performance under the contract shall consist primarily of the PEMP as called for within the Part II, Section I. The QASP establishes the process DOE shall use to ensure that the Contractor has performed in accordance with the performance standards and expectations. The QASP shall summarize the performance standards, expectations and acceptable quality levels; describe how performance will be monitored and measured; describe how the results will be evaluated; and state how the results will affect contract payment.

The Contractor shall develop and implement a Laboratory assurance process, acceptable to the Contracting Officer, which provides reasonable assurance that the objectives of the Contractor’s management systems are being accomplished and that the systems and controls will be effective and efficient. The Contractor’s assurance process shall reflect an understanding of the risks, maintain mechanisms for eliminating or mitigating the risks, and maintain a process to ensure that the management systems and their attendant assurance process(es) meet contract requirements.
C.4 – STATEMENT OF WORK (REVISED 10/1/2006 – M0000)

a. General.

The Contractor shall, in accordance with the provisions of this contract, provide the intellectual leadership and management expertise necessary and appropriate to manage, operate, and staff the Laboratory; to accomplish the research mission and roles assigned by DOE to the Laboratory; and to perform the work described in this Statement of Work (SOW). The DOE research activities are assigned through strategic planning, program coordination, and cooperation between the Laboratory and DOE.

Because the research activities of the Laboratory are dynamic, this SOW is not intended to be all inclusive or restrictive, but is intended to provide a broad framework and general scope of the work to be performed at the Laboratory during the term of the contract. This SOW does not represent a commitment to, or imply funding for, specific projects or programs. All projects and programs will be authorized individually by DOE and/or other work sponsors in accordance with the provisions of this contract.

All work under this contract shall be conducted in a manner that will protect the environment and assure the safety and health of employees and the public. This objective is to be accomplished by the Laboratory implementing an Integrated Safety Management System that includes an Environmental Management System. In performing the contract work, the Laboratory shall implement appropriate program and project management systems to track progress and pursue cost effectiveness in work activities; develop integrated plans and schedules to achieve program objectives, incorporating input from DOE and stakeholders; maintain sufficient technical expertise to manage activities and projects throughout the life of a program; maintain Laboratory facilities and infrastructure as necessary to accomplish assigned missions; and utilize appropriate technologies and management systems to improve cost efficiency and performance.

b. Mission and Major Programs

1. Laboratory Mission. In support of major DOE sponsor organizations (see C.4(b)(3)) that evaluate the Laboratory’s program performance, the central mission of the Laboratory is to provide scientific leadership needed to carry out the world class science and technological innovation to support the programs and missions of SC and DOE. The Laboratory’s mission addresses four distinct goals:
• To perform the highest quality multi-disciplinary research in the 
  basic energy sciences, nuclear physics, high energy physics, 
  biological and environmental research, fusion energy sciences, 
  computational and technology research, and other related 
  sciences in a manner that ensures employee and public safety 
  and protection of the environment;
• To develop, maintain, and operate unique national experimental 
  facilities that are available to qualified investigators;
• To educate and train future generations of scientists and 
  engineers to promote the Department’s national science and 
  education goals; and
• To transfer knowledge and technological innovations and foster 
  productive relationships among Laboratory research programs, 
  universities, and industry in order to promote national economic 
  competitiveness.

2. Laboratory Business Lines. In support of the DOE mission, the 
   Laboratory will pursue a number of distinct business lines that include:

   i. Materials Science

   The Contractor shall perform materials synthesis and 
   characterization through the use of photon, neutron, electron, 
   and ion based materials analysis facilities. The Contractor shall 
   perform research to obtain an understanding of materials 
   structure for energy, health, and national security applications, 
   including down to the nanoscale level. The facilities available 
   for this research include the Advanced Photon Source, Center 
   for Nanoscale Materials, Electron Microscopy Center, and the 
   Intense Pulse Neutron Source.

   The Contractor shall construct and operate a broad range of 
   nationally available user facilities for characterizing materials, 
   together with an integrated approach for allowing access to 
   these facilities by internal ANL organizations as well as external 
   collaborations. Some distinguishing features include:
   • Research Capabilities
   • Biological & Inorganic materials synthesis and characterization
   • Hard X-ray Nanoscale Research
   • Facilities:
     • X-rays (Advanced Photon Source [APS])
     • Center for Nanoscale Materials [CNM])
     • Neutrons (Intense Pulsed Neutron Source [IPNS])
     • Electrons (Electron Microscopy Center [EMC])
ii. Mathematics and Computer Sciences

The Contractor shall provide computational tools to advance the forefront of science. The Contractor shall participate in developing a world-leading computing expertise and software systems to power all major computational platforms. This includes serving as a leader in the fundamental architecture for massively parallel computer systems and tying together computer science, advanced architecture research, and applied modeling and simulation to carry out leading-edge research. This effort requires extensive collaborations with industry, other national laboratories, such as Oak Ridge National Laboratory for the Leadership Class Computing for open scientific research, and universities.

ANL’s distinguishing Research Capabilities in this area include:
- Advanced Architecture Research
- Applied Modeling and Simulation
- Computational Mathematics

iii. Advanced Biosciences

The Contractor shall perform research and development work to increase the U.S. bio-defense capabilities, develop new energy sources and environmental technologies, and advance medical sciences. The Contractor shall construct and operate a broad range of nationally available user facilities for characterizing biological materials, together with an integrated approach for allowing access to these facilities by internal ANL organizations as well as external collaborations. This work will include optimizing crystal growth of proteins and other biomolecules, and automation of x-ray scattering beam lines. Distinguishing features include:

- Research Capabilities
- Imaging
- Structural Biology/Genomics
- Bioinformatics
- Facilities:
  - University of Chicago Structural Biology Center

iv. Fundamental Physics

The Contractor shall maintain a fundamental nuclear physics program to understand fundamental matter and forces and master connections between high energy and nuclear physics,
astrophysics and cosmology. The Contractor shall maintain a lead role in experimental theoretical physics including nuclear structure and astrophysics with stable beams, laser trapping of individual atoms, and high energy physics experiments and theory. This work will be based on an internationally leading in-house low-energy nuclear physics program centered on the Argonne Tandem Linear Accelerator System (ATLAS) with strong ties to DOE experimental nuclear physics programs and to nationally ranked particle astrophysics and nuclear astrophysics programs. Distinguishing features include:

- Research Capabilities
- Nuclear Structure and astrophysics with stable beams
- Laser trapping of individual atoms
- High energy physics; experiments and theory
- Facilities:
  - Argonne Tandem-Linac Accelerator System

v. Energy and Environmental Science and Technology

The Contractor shall advance approaches to the integration of economics, computing, engineering and sciences. This includes integrated approaches to energy and environmental challenges, advance the frontiers of large-scale, systems-level modeling, and simulations as applied to energy and environmental technologies, and provide the support for next generation nuclear reactor designs.

The Contractor shall assist DOE in responding to a broad range of problems associated with the nuclear fuel cycle, at levels ranging from the basic science of fuel rod design and separation chemistry to the complex of problems related to reactor design and the closed fuel cycle. Distinguishing features include:

- Research Capabilities
- Nuclear fuel cycle & reactor design
- Transportation science
- Integration of Economics, Computing, engineering and sciences
- Facilities:
  - Cloud and solar radiation test-bed
  - Engine Research Facility for Diesels
  - Advanced Powertrain Test facility for hybrid-vehicles
  - Electrochemical Analysis and Diagnostics Laboratory
vi. Accelerator Design

The Contractor shall maintain the DOE lead in accelerator design, construction, and operations. The Contractor shall construct and operate entire accelerator complexes and user facilities. This includes maintaining the leadership for development of synchrotron operations, the application of materials science for superconducting Radio Frequency cavities and superconducting ion accelerator technology, new classes and performance standards for RF cavities, the construction of high-brightness electron guns, accelerator R&D for low velocity beams, as well as the application of engineering and project management capabilities. Distinguishing Research Capabilities include:

- Accelerator R&D for low velocity beams
- Superconducting RF Design
- Synchrotron Radiation Sources

vii. National Security

The Contractor shall serve as a national leader in energy infrastructure risk mitigation, detection and deterrence of radioactive threats, and bio-micro-arrays for agent detection. The objective of this program is to reduce the homeland security threats. Distinguishing Research Capabilities in this area include:

- Infrastructure Assurance
- Nuclear Risk Mitigation
- Bioagent Detection

3. Primary Program Sponsors. Work under this contract includes scientific and technical programs sponsored by major DOE organizations. The primary DOE sponsor is:

The Office of Science

Other DOE organizations that sponsor work at the Laboratory include:

- Nuclear Energy, Science and Technology
- Energy Efficiency and Renewable Energy
- Fossil Energy
- Environmental Management
- National Nuclear Security Administration
- Security and Emergency Operations
- Counterintelligence
Environment, Safety and Health

Additionally, the Contractor may be authorized to pursue other DOE and non-DOE missions [most notably those of the Department of Homeland Security (DHS), Nuclear Regulatory Commission (NRC), Department of Agriculture (DOA), Department of Defense (DOD), the National Institutes of Health (NIH), and the National Aeronautics Space Administration (NASA)]. The DOE derives the benefits from the Laboratory’s mission accomplishments and the development and utilization of the Laboratory’s core competencies which are supported by this work.

4. Office of Science Programs.

The Laboratory is dedicated to basic and applied investigations in a multitude of scientific disciplines. A summary of current Laboratory programs follows. Descriptions of major programs are updated periodically in the form of business plans or institutional plans.

i. Basic Energy Sciences. The Contractor shall conduct forefront research in broad areas of materials sciences, chemical sciences, geosciences, and biosciences. Programs that take advantage of the unique scientific user facilities in materials sciences and related disciplines available at the Laboratory - for example, the Advanced Photon Source and the Intense Pulsed Neutron Source, the Center for Nanoscale Materials – are to be encouraged. The Contractor shall manage all aspects of designated scientific user facilities, which serve the needs of academic, industrial, and government scientists.

ii. Biological and Environmental Research. The Contractor shall conduct programs on structural biology, structural and functional genomics, biophysics, bioinformatics, molecular and cellular biology, climate, atmospheric and carbon sciences, and environmental remediation science and bioremediation that build on the unique facilities and expertise available at the Laboratory.

iii. Nuclear Physics. The Contractor shall conduct work to: perform frontier research in theoretical and experimental nuclear physics; build, maintain and operate state of the art user facilities for nuclear physics; perform research and development work in accelerator science, experimental detector design and computing relevant to nuclear physics; operate the ATLAS facility and participate in the next generation of accelerators for particle research such as the Spallation Neutron Source and the Rare Isotope Accelerator and carry out construction projects in Nuclear Physics areas as assigned. In pursuit of this program
of Nuclear Physics work, the Contractor operates large accelerator-based user facilities (such as the ATLAS facility) and carries on an in-house program of research in theoretical and experimental nuclear physics.

iv. High Energy Physics. The Contractor shall conduct work to: perform frontier research in theoretical and experimental high energy physics; build, maintain and operate state of the art experimental facilities for high energy physics; perform research and development work in accelerator science, experimental detector design and computing relevant to high energy physics; support operations of existing DOE High Energy Physics experiments and carry out construction projects in High Energy Physics areas as assigned. In pursuit of this program of High Energy Physics, the Contractor carries on an in-house program of research in theoretical and experimental particle and high energy physics.

v. Fusion Energy Sciences. The Contractor shall conduct programs for the development of fusion energy technology consistent with the unique facilities and expertise available at the Laboratory. The main areas of the program are: plasma-facing components, power extraction studies, fusion power plant system studies, materials research, and plasma interactions studies. The Contractor will work cooperatively with other institutions in the U.S. which are involved in fusion technology development.

vi. Computational and Technology Research. The Contractor shall conduct computational research including applied mathematical sciences, computer sciences, and computational sciences. The research shall emphasize both excellence and relevance, such that advances in mathematics and computer science help the Department to solve its most pressing mission-related problems. Teaming and collaboration, which bring different skills together to focus on common problems, shall be actively encouraged. To this end, the Contractor shall create and maintain an environment that reinforces collaboration with the best researchers, irrespective of where they are located, be that within the Laboratory, at other laboratories, or at universities, within the U.S. or around the world.

The Contractor shall devote appropriate attention to the management of information systems that support major experiments and other scientific data-intensive resources so as to assure their timeliness, security, utility, cost-effectiveness, and responsiveness to customers.
5. Environmental Management

The Contractor shall plan and execute environmental restoration activities at the Laboratory in accordance with DOE program goals, initiatives, strategies, guidance letters, and approved project baselines in areas such as: (i) Environmental remediation and facility deactivation, decommissioning, decontamination, and demolition in accordance with required permits and with DOE Orders; and (ii) Research and development tasks to support technologies to reduce costs and improve efficiencies in the environmental arena. Environmental restoration activities include long-term stewardship of capped landfills, groundwater extraction wells, and phyloremediation plantation.

The environmental management work shall be conducted in a safe and cost-effective manner leading to DOE, regulatory and public confidence in cleanup efforts. For assigned program elements, the Contractor will: (i) implement comprehensive project management systems to track progress, maintain regulatory compliance, and increase cost effectiveness of work activities; (ii) involve the participation of DOE, regulators, and other stakeholders in decision making and priority setting of environmental management activities; and (iii) propose, and where assigned, implement cleanup activities commensurate with commercial practices in the areas of cost, ability to implement, schedule and public acceptability. The Contractor shall establish and maintain systems to effectively manage and implement an environmental restoration program in accordance with goals and objectives set forth by the Department. These systems must ensure that the technical approach is consistent with DOE cleanup strategies and in accordance with the current approved baseline; to implement an overall system to effectively and efficiently manage all groundwater and contaminated soil cleanup activities; and to expedite final disposition of facilities requiring decommissioning and decontamination.

6. Nuclear Programs

To the extent required by the Department, the Contractor will maintain capabilities that support the nuclear fuel cycle and include nuclear fuel development, spent fuel disposition technology development, liquid metal technology, post-irradiation examinations, waste and nuclear material characterization, nuclear waste stabilization development, and development of dry interim storage for spent fuel and other highly radioactive materials. The Contractor will continue to maintain a unique suite of nuclear, radiological, and industrial facilities, as well as operational organizations that support these activities.
7. Technology Transfer Programs

The Contractor shall contribute to U.S. technological competitiveness through research and development partnerships with industry that capitalize on the Contractor's expertise and facilities. Principal mechanisms to effect such contributions are: cooperative research and development agreements, access to user facilities, reimbursable work for non-DOE activities, personnel exchanges, licenses, and subcontracting.

The Contractor shall cooperate with industrial organizations to assist in increasing U.S. industrial competitiveness, by assisting in the application of energy science and technology R&D. Such cooperation may include an early transfer of information to industry by arranging for the active participation by industrial representatives in the Contractor's programs. Cooperation with industrial partners may include long-term strategic partnerships aimed at commercialization of Laboratory inventions or the improvement of industrial products. The Contractor shall respond to specific near-term technological needs of industrial companies with special emphasis given to working with the types of businesses identified in the Small Business Subcontracting Plan clause of this contract. The Contractor may also capitalize on its location in the Midwest by developing productive relationships with regional and local companies and through forums such as conferences, workshops, and traveling presentations. It is anticipated that these organizations will be particularly effective participants in the Laboratory's technology transfer activities in promoting a mutually beneficial relationship between DOE and the communities surrounding the Laboratory. Cooperation may also include use by industrial organizations of Laboratory facilities and other assistance as may be authorized, in writing, by the Contracting Officer.

8. University and Science Education Program

The Contractor shall work with colleges and universities, with special emphasis on Historically Black Colleges and Universities/Minority Institutions, and initiate new programs to enhance science and mathematics education at all levels. The Contractor shall encourage participation by a diverse group of faculty and students in Laboratory programs to bring their talents to bear on important research problems and contribute to the education of future scientists and engineers. The Contractor shall also conduct programs for students and faculty to enrich mathematics and science education. A particular purpose of these programs is to encourage members of under-represented societal groups to enter careers in science and engineering.
The Contractor shall maintain its programs of cooperation with the academic and educational community and with nonprofit research institutions for the purpose of promoting research and education in scientific and technical fields of interest to DOE's programs. This cooperation may include, but is not limited to, such activities as: (i) joint experimental programs with colleges, universities, and nonprofit research institutions; (ii) interchange of college and university faculty and Laboratory staff; (iii) student/teacher educational research programs at the pre-collegiate and collegiate level; (iv) post-doctoral programs; (v) arrangement of regional, national, or international professional meetings or symposia; (vi) use of special Laboratory facilities by colleges, universities, and nonprofit research institutes; or, (vii) provision of unique experimental materials to colleges, universities, or nonprofit research institutions or to qualified members of their staffs.

9. International Collaboration and National Security

In accordance with DOE policies, and in consultation with DOE, the Contractor shall maintain a broad program of international collaboration in areas of research of interest to the Laboratory and to DOE. The Contractor shall also support the DOE nuclear security mission to reduce threats posed by nuclear and radiological materials through illicit or improper use of nuclear and radiological facilities. This can include the material protection control and accounting program to assist nuclear facilities in Russia and the independent Former Soviet Union countries, as well as the proliferation and threat reduction programs, verification technology, and foreign research reactor fuels program.

10. Other Programs

The Contractor is responsible for the conduct of such other programs and activities as the Parties may mutually agree, including: (i) The providing of the facilities of the Laboratory to the personnel of public and private institutions for the conduct of research, development, and demonstration work, either within the general plans, programs and budgets agreed upon from time to time between DOE and the Contractor, or as may be specifically approved by DOE. The Laboratory facilities shall be made available on such other general bases as DOE may authorize or approve; (ii) The conduct of research and development work for non-DOE sponsors which is consistent with and complementary to the DOE's mission and the Laboratory's mission under the contract, and does not adversely impact or interfere with execution of DOE-assigned programs, does not place the facilities or
Laboratory in direct competition with the private sector and for which the personnel or facilities of the Laboratory are particularly well adapted and available, as may be authorized, in writing, by the Contracting Officer; (iii) The dissemination and publication of unclassified scientific and technical data and operating experience developed in the course of the work; (iv) The furnishing of such technical and scientific assistance (including training and other services, material, and equipment), which are consistent with and complementary to the DOE’s and Laboratory’s mission under this contract, both within and outside the United States, to the DOE and its installations, Contractors, and interested organizations and individuals; and (v) Research funded by the Department of Homeland Security shall be treated as Department funded research.

11. Major Laboratory and User Facility Operations:

The Laboratory shall manage and operate major Laboratory and user facilities and develop other user facilities important to DOE missions, such as:

**Advanced Photon Source (APS):** The APS is a national user facility. The mission of the APS is to produce reliable, tunable x-ray beams for user research. Users at the APS conduct forefront basic and applied research in the fields of material science, biological science, physics, chemistry, environmental, geophysical, and planetary science, as well as x-ray instrumentation. The APS can accommodate as many as 70 beamlines and serves a user community that exceeds 2500 individual industry, government, and university users.

**Intense Pulsed Neutron Source (IPNS):** The IPNS is a national user facility for neutron scattering experiments. The IPNS provides a dozen neutron scattering instruments, as well as facilities for studying radiation effects. Approximately 250 individual users perform a variety of neutron scattering experiments each year.

**Argonne Tandem-Linac Accelerator System (ATLAS):** The ATLAS facility is a superconducting accelerator for projectiles heavier than the electron. This facility is a DOE National Collaborative Research Facility open to scientists from all over the world. ATLAS consists of a sequence of machines that produce high precision heavy-ion beams ranging over all possible elements, from hydrogen to uranium, to energies as high as 17 MeV per nucleon and delivered to one of three target areas.

**Center for Nano-scale Materials (CNM):** The CNM is to create, characterize, and understand the behavior of new functional materials
on the nanoscale. The CNM exploits the unique electronic, magnetic, structural, chemical, and optical properties of individual nanostructures and their ordered arrays and includes examining the behavior and fundamental properties of functional nanocomposites of patterned ferroelectric and magnetic films, bio-inorganic hybrids, nanophotonic phenomena, and assisted self-assembly. An APS hard x-ray nanoprobe beamline is part of the CNM.

**Electron Microscopy Center (EMC):** The EMC is used to conduct materials research using advanced microstructural characterization methods and an Intermediate Voltage Electron Microscope. Research includes microscopy based studies in high thermal conductivity superconducting materials, irradiation effects in metals and semiconductors, phase transformations, and processing related structure and chemistry of interfaces in thin films.

**Atmospheric Radiation Measurement (ARM) Climate Research Facility:** The ARM Program was created to resolve scientific uncertainties about global climate change with a specific focus on improving the performance of general circulation models used for climate research and prediction. The ARM Program establishes and operates three field research sites, called Cloud and Radiation Testbeds (CARTS), in several climatically significant locations. Scientists collect and analyze data obtained over extended periods of time from large arrays of instruments to study the effects and interactions of sunlight, radiant energy, and clouds on temperatures, weather, and climate.

**Transportation Technology Research and Development (R&D) Center:** The Transportation Technology R&D Center brings together scientists and engineers from many disciplines to find cost-effective solutions to the problems of transporting people and goods from one place to another. Argonne’s transportation research focuses on three areas: advancing toward an environmentally benign passenger car, from fuel production through recycling of obsolete vehicles; paving the way to safer, cleaner trucks, buses, and locomotives; and improving traffic flow, safety, and security. The management of the Transportation R&D Center and the associated research and development conducted in this facility are major elements of the Energy Efficiency and Renewable Energy Program at the Laboratory.

Many of the research activities at the Laboratory are designed and conducted by university and industry users, with the Laboratory maintaining the facilities and ensuring that provisions are in place to perform the activities safely and effectively.
12. Policy, Planning, and Analysis Support. The Laboratory shall conduct analysis activities in support of energy policy issues of concern to DOE, data and model development for projecting energy demand and evaluation of policy impacts as input to DOE’s assessment of United States energy strategies.

13. Laboratory-Directed Research and Development (LDRD). The Laboratory shall conduct a LDRD program that leverages the Laboratory’s scientific expertise and key technologies toward innovations that are applicable to DOE’s, and other sponsor’s missions. LDRD contributes to the development of scientific staff capability and vitality through the support of new research programs of great merit and potential, bringing important capabilities to serve DOE and other related national needs.

14. University and Science Education Programs. The Contractor shall develop and implement programs that utilize Laboratory resources, staff, technological expertise, collaborative and cooperative relationships with other academic and research institutions in order to advance science education opportunities and to improve the quality of science, mathematics, computing, and technology education in the United States.

15. Engineering. The Laboratory shall maintain an engineering and machine shop fabrication capability that supports the focus on state-of-the-art research and development to enhance Laboratory technical strengths and to meet the needs of current and future Laboratory programs.

16. Radiological Assistance Program. The Laboratory shall provide health physics/radiological protection expertise and capability in support of the DOE Radiological Assistance Program (RAP) Region 5, which includes the states of Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, Ohio, and Wisconsin.

c. Administration and Operation of the Laboratory.

The Contractor shall manage, operate, protect, maintain and enhance the Laboratory’s ability to function as a DOE multi-program laboratory, provide the infrastructure and support activities, support the accomplishment of the Laboratory’s missions, and assure the accountability to the DOE under the results-oriented, performance-based provisions of this contract. The Contractor shall implement a broad scope continual self-assessment process to assess the overall performance in, and drive continuous improvement of, Laboratory operations and administration.
1. Strategic and Institutional Planning. The Contractor shall conduct a strategic planning process and develop institutional plans and strategic facility plans in consideration of DOE provided planning guidance and strategic planning material to assure consistency with DOE missions and goals and with due regard for Environment, Safety, and Health (ES&H) issues.

2. Protection of Workers, the Public and the Environment. The safety and health of workers and the public and stewardship of the environment are fundamental responsibilities of the Contractor. Accordingly, the Contractor shall implement a Laboratory Integrated Safety Management (ISM) system which establishes the environmental, safety, and health processes that support the safe performance of all Laboratory work. The ISM system shall include an Environmental Management System. The ISM system shall be applied to all Contractor activities conducted by or for the Laboratory, through subcontractors or other entities, and shall provide for ES&H oversight of Laboratory and subcontractor operations. The Contractor shall also implement emergency management programs.

3. Integrated Safeguards and Security (ISSM). The Contractor shall protect Laboratory assets, personnel, property, and information, to sustain the science mission in a manner commensurate with risks. The Contractor shall conduct a Laboratory Integrated Safeguards and Security Management program to include physical site security, protection of Government property, sound cyber security protections, protection of information, personnel security, and access control for Laboratory staff and visitors, export controls, a counterintelligence program and a comprehensive emergency management program.

4. Laboratory Facilities. The Contractor shall manage and maintain Government-owned facilities, both provided and acquired, to further national interests and to perform DOE statutory missions. Recognizing that these facilities are a national resource, these facilities may also be made available, with appropriate agreements, to private and public sector entities including universities, industry, and local, state, and other government agencies. The Contractor shall perform overall integrated planning, acquisition, upgrades, and management of Government-owned, leased or controlled facilities and real property accountable to the Laboratory. The Contractor shall employ facilities management practices that are best-in-class and integrated with mission assignments and business operations. The maintenance management program shall maintain Government property in a manner that (A) promotes and continuously improve operational safety, environmental protection and compliance, property preservation and
cost effectiveness, (B) ensures continuity and reliability of operations, fulfillment of program requirements and protection of life and property from potential hazards, and (C) ensures the condition of the assets will be maintained or improved.

5. Waste Management. Based on DOE guidance documents, all waste management activities shall be managed in compliance with all applicable regulatory requirements. The Contractor shall provide waste management activities for all waste generated by research, operations and clean-up activities. These activities will include appropriate characterization, treatment, storage, transportation, and disposal. Waste management activities include: (A) timely characterization, consolidation, segregation and storage of waste; (B) treatment that complies with storage and/or disposal criteria; (C) efficient shipment of waste for treatment, storage and/or disposal; (D) maintaining sufficient and compliant waste storage space at the Laboratory to accommodate waste generation and waste backlog; and (E) implementation of an effective waste minimization and pollution prevention programs. Waste management activities will also include disposal of legacy remote-handled transuranic waste. The Contractor shall conduct all research, environmental remediation, and operations activities so that all regulatory requirements, agreements, and orders related to the generation, characterization, treatment, storage and disposal of hazardous waste are met. Additionally, the Contractor shall implement control systems to assure DOE that waste management costs are included in project and program budgets and that hazardous and radiological waste will not be stockpiled at the site.

6. Business Management. The Contractor shall manage an effective integrated system of internal controls for all business and administrative operations of the Laboratory.

i. Human Resources Management. The Contractor shall establish and maintain human resource systems which attract and retain outstanding employees, and continually motivate them to achieve high productivity in scientific research and Laboratory operations.

The Contractor also shall create and maintain a Laboratory environment that promotes diversity and fully utilizes the talents and capabilities of a diverse workforce. The Contractor shall seek to recruit a diverse workforce by promoting and implementing DOE and Laboratory goals. Special consideration will be given to Historically Black Colleges and Universities/Minority Institutions as potential resource pools. The Contractor shall also strive to promote diversity in all
of the Laboratory's subcontracting efforts with emphasis on the use of the types of businesses identified in the Small Business Subcontracting Plan clause of this contract.

ii. **Financial Management.** The Contractor shall maintain a financial management system responsive to the obligations of sound financial stewardship and public accountability. The overall system shall include an integrated accounting system suitable to collect, record, and report all financial activities; a budgeting system which includes the formulation and executions of all resource requirements needed to accomplish projected missions and formulate short- and long-range budgets; an internal control system for all financial and other business management processes; and a disbursements system for both employee payroll and supplier payments. The internal audit group for the Laboratory shall report to the most senior governing body of the Contractor's parent organization(s).

iii. **Purchasing Management.** The Contractor shall have a DOE-approved purchasing system to provide purchasing support and subcontract administration. The Contractor shall, when directed by DOE and may, but only when authorized by DOE, enter into subcontracts for the performance of any part of the research work under this contract.

iv. **Property Management.** The Contractor shall have a DOE approved property management system that provides assurance that the Government owned, contractor held property is accounted for, safeguarded and disposed of in accordance with DOE's expectations and policies. The Contractor shall perform overall integrated planning, acquisition, maintenance, operation, management and disposition of Government-owned personal and real property, and Contractor-leased facilities and infrastructure used by the Laboratory. Real property management shall include providing office space for the DOE Argonne Site Office as directed by the DOE Argonne Site Office Manager.

7. **Legal Services.** The Contractor shall maintain legal support for all contract activities including, but not limited to, those related to patents, licenses, and other intellectual property rights; subcontracts; technology transfer; environmental compliance and protection; labor relations; and litigation and claims.

8. **Information Resources Management.** The Contractor shall maintain information systems for organizational operations and for activities
involving general purpose programming, data collection, data processing, report generation, software, electronic and telephone communications, and computer security. Contractor shall provide computer resource capacity and capability sufficient to support Laboratory-wide information management requirements. The Contractor also shall conduct a records management program.

9. Support to the Howard T. Ricketts Laboratory (HTRL). The Contractor shall provide utility services, e.g., electricity, steam, laboratory and domestic water, sanitary and laboratory wastewater treatment, and emergency response services to the HTRL which will be a University of Chicago-owned and -operated biocontainment level 3 facility on a portion of the Argonne site which was leased by DOE to the University. The cost of such utility services will be billed to the University. DOE will from time to time direct the Contractor to undertake functions related to the construction and operations of the HTRL such as preparing invoices, reviewing plans, and coordinating utility connections and other aspects of HTRL construction and operations. The Contractor may perform other activities in support of the HTRL for the University under work-for-others arrangements.

10. Support to Other Privately-Owned Facilities at Argonne. The Contractor shall provide utility services and other support as directed by DOE to any privately-owned facility that may be constructed on the ANL Site.

11. Other Support. The Contractor shall provide other administrative services necessary for Laboratory operations and logistics support to the DOE Argonne Site Office as requested by the Contracting Officer.

C.5 – PLANS AND REPORTS (REVISED 10/1/2006 – M0000)

The Contractor shall submit periodic plans and reports, in such form and substance as required by the Contracting Officer. These periodic plans and reports shall be submitted at the intervals, and to the addresses and in the quantities as specified by the Contracting Officer. Where specific forms are required for individual plans and reports, the Contracting Officer shall provide such forms to the Contractor. The Contractor shall require subcontractors to provide reports that correspond to data requirements the Contractor is responsible for submitting to DOE. Plans and reports which may be submitted in compliance with this provision are in addition to any other reporting requirements found elsewhere in other clauses of this contract. It is the intention of DOE to consult with the Contractor in determining the necessity, form and frequency of any reports required to be submitted by the Contractor to DOE under this contract.
# PART I

## SECTION D

### PACKAGING AND MARKING

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SECTION D

PACKAGING AND MARKING

D.1 – PACKAGING (Revised 10/01/2006 – M0000)

Preservation, packaging, and packing for shipment or mailing of all work delivered hereunder shall be in accordance with good commercial practice and adequate to insure acceptance by common carrier and safe transportation at the most economical rates.

D.2 – MARKING (Revised 10/01/2006 – M0000)

Each package, report or other deliverable shall be accompanied by a letter or other document which:

a. Identifies the contract number under which the item is being delivered.
b. Identifies the contract requirement or other instruction which requires the delivered item(s).
PART I

SECTION E

INSPECTION AND ACCEPTANCE

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SECTION E

INSPECTION AND ACCEPTANCE

E.1 – FAR 52.246-9 – INSPECTION OF RESEARCH AND DEVELOPMENT (SHORT FORM) (APR 1984) (Revised 10/01/2006 – M0000)

The Government has the right to inspect and evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

E.2 – CERTIFICATION (Revised 05/22/2009 – M0043)

In order for the Contracting Officer to accept any products or services funded by the Recovery Act, the Contractor shall certify that the items were delivered and/or work was performed for a purpose authorized under the Recovery Act.
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SECTION F

DELIVERIES OR PERFORMANCE

F.1 - PERIOD OF PERFORMANCE (REVISED 12/01/2017 – M0798)

a. This contract shall be effective as specified in Block No. 28 - Award Date, of Standard Form 33, and shall continue up to and including September 30, 2021, unless sooner terminated according to its terms. The contract may be extended in accordance with Clause F.2 - AWARD TERM INCENTIVE (SPECIAL).

b. The contract transition period is from award date through September 30, 2006.

F.2 - AWARD TERM INCENTIVE (SPECIAL) (Revised 10/01/2006 – M0000)

a. Definitions. For purposes of this clause:

1. "A" means notably exceeds expectations of performance as set within performance measures identified for each Objective or within other areas within the purview of the Objective. The term "A" may be expressed using numbers, adjectives, or any other assessment approach deemed appropriate by the Government.

2. "B+/Meets Expectations" means the rating available to the Contractor under the performance evaluation process where the Contractor has met the stated contract performance objectives. The term "meets expectations" may be expressed using numbers, adjectives, or any other assessment approach deemed appropriate by the Government.

3. "Award Term Determination Official (ATDO)" means the Department of Energy official designated to determine whether the Contractor has met the contractual requirements in order to earn any award term extension during an evaluation period. The ATDO and the Fee Determination Official (FDO) may be the same person.

4. "Initial contract term" for purposes of this clause only, means the period of performance commencing on the date the Contractor assumes full responsibility for the Laboratory pursuant to the provisions of Clause H.33(a) through the end date specified in Clause F.1(a) above.

b. Eligibility for Award Term Extensions. In order for the Contractor to earn a contract term extension pursuant to the award term incentive, the contractor must:

1. Have been assessed by the FDO to have achieved an overall rating of at least an "A-" for Science and Technology and an overall rating of at least a "B+" for Management and Operations for each performance evaluation period (except as provided in (2) below), and, meet the contract performance goals, objectives, standards, or criteria and other contract requirements applicable to
earning additional award term, as may be defined in the Performance Evaluation and Measurement Plan (or equivalent document), as determined by the ATDO. Provided, however, that the Contractor must also obtain a minimum score of at least 3.1 for each individual Science and Technology Goal and 2.5 for each individual Management and Operations Goal. And, provided, further that the foregoing proviso shall also apply to subparagraph (b) (2) below with respect to the second and third performance evaluation periods.

2. With respect to the evaluation period for the first award term extension, the Contractor must achieve a rating of at least "B+" for both Science and Technology and Management and Operations for the first performance evaluation period and a rating of at least an "A-" for Science and Technology and a rating of at least a "B+" for Management and Operations for each of the next two performance evaluation periods.

c. Award Term Evaluation and Determination

1. The Government may extend the contract term up to a total of twenty years through operation of this award term incentive clause. The evaluation period for the first award term extension will be the first three performance evaluation periods of the initial contract term. Evaluations for subsequent award term extensions will be conducted annually.

2. The ATDO will unilaterally determine if the Contractor: (i) meets eligibility requirements to earn an award term extension; and (ii) has earned additional contract term.

3. The amount of award term that may be earned by the Contractor for the first award term extension is thirty-six (36) months. The amount of award term that may be earned by the Contractor for each subsequent award term extension is twelve (12) months.

4. If the ATDO determines that the Contractor has earned additional award term, the Contracting Officer will unilaterally modify the contract to extend the term of the contract.

5. If the Contractor fails either (i) to earn the first award term extension, or (ii) to earn the award term 3 times, the Contractor becomes ineligible to earn any additional award term extension(s) under the contract.

d. Conditions.

1. This clause does not confer any other rights to the Contractor other than the right to earn additional contract term as specified herein. Any additional contract term awarded to the Contractor under this clause is subject to all of the other terms and conditions of this Contract. Should the terms of this clause conflict with the terms of any other clause under this Contract, then this clause shall be subordinate.

2. The Contractor's earning of an award term extension and the Contractor's right to perform an earned award term extension are subject to:
   i. The Government's continuing need for the contract's work;
   ii. The availability of funds; and
iii. Mutual agreement by the parties to contract modifications that incorporate changes to, or new, DOE policy or contract clauses;

3. The Government may make unilateral changes to the Performance Evaluation and Measurement Plan (or equivalent document) prior to the start of an award term evaluation period.

4. The Contractor is not entitled to any cancellation charges, termination costs, equitable adjustments, or any other compensation due to the Contractor failing to earn or forfeiting award term.

5. A significant failure of Contractor's management controls as defined in the clause entitled "Management Controls" or a first degree performance failure as defined in the clause entitled "Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts" may result in the forfeiture of up to 3 years of earned award term. This potential forfeiture is in addition to other remedies provided for in the contract.

F.3 - FAR 52.242-15 - STOP WORK ORDER (AUG 1989) - ALTERNATE I (APR 1984)
(Revised 10/01/2006 – M0000)

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

b. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if --
   1. The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
   2. The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may
receive and act upon the claim submitted at any time before final payment under this contract.

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

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

F.4 - STOP WORK AND SHUTDOWN AUTHORITY (REVISED 10/01/2006 – M0000)

FAR 52.242-15 – Stop Work Order – Alternate I, allows only the Contracting Officer to stop work or shutdown facilities for reasons other than harm or imminent danger to the environment or health and safety of employees and the public.

Due to the immediate need to stop work due to situations where the Contractor's acts or failures to act cause substantial harm or present an imminent danger to the environment or health and safety of employees or the public, any DOE employee may exercise the stop work authority contemplated in DEAR 970.5223-1 – Integration of Environment, Safety, and Health Into Work Planning and Execution.

F.5 - PRINCIPAL PLACE OF PERFORMANCE (Revised 10/01/2006 – M0000)

The principal place of contract performance is at the site of the Argonne National Laboratory, Argonne, DuPage County, Illinois.
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SECTION G

CONTRACT ADMINISTRATION DATA

G.1 - DOE CONTRACTING OFFICER (REVISED 10/01/2006 – M0000)

For the definition of Contracting Officer see Federal Acquisition Regulation (FAR) 2.101. The Contracting Officer is the only individual who has the authority on behalf of DOE to take the following actions under the contract:

1. assign additional work within the general scope of the Statement of Work of the contract;
2. issue a change as defined in the "Changes" clause of the contract;
3. change any of the expressed terms, conditions or specifications of the contract;
4. accept non-conforming work; or
5. waive any requirement of this contract.

G.2 - DOE CONTRACTING OFFICER’S REPRESENTATIVE(S) (COR) (REVISED 10/01/2006 – M0000)

Performance of the work under this contract shall be subject to the technical direction of DOE Contracting Officer’s Representative(s) in accordance with Clause I.89 - DEAR 952.242-70 - Technical Direction (DEC 2000). Any change in any DOE COR may be made administratively by letter from the Contracting Officer consistent with Clause I.89 - DEAR 952.242-70 - Technical Direction (DEC 2000).

G.3 - CONTRACT ADMINISTRATION (REVISED 10/01/2006 – M0000)

The contract will be administered by:

U.S. Department of Energy
Argonne Site Office
9800 South Cass Avenue
Argonne, IL  60439

Written communications regarding the contract shall be mailed to the above address except for correspondence regarding patent or intellectual property related matters which should be addressed to:

U.S. Department of Energy
Office of Chief Counsel - Intellectual Property Law Division
ATTN:  DOE Patent Counsel
9800 South Cass Avenue
Argonne, IL  60439
Information copies of patent related correspondence should also be sent to the Contracting Officer.

G.4 - CONTRACT ADMINISTRATION DATA (REVISED 05/22/2009 – M0043)

The following reporting procedure will apply to submission of monthly cost reports for Recovery Act work specified in the work scope baseline.

a. The contractor will separately identify costs that pertain to the Recovery Act work. The Contractor will provide a monthly report that identifies the total amount drawn on the letter of credit. The Contractor shall submit a monthly report that separates and identifies Recovery Act costs associated with each appropriation at the Recovery Act program and project levels.

b. The Contractor shall certify in each monthly report that the costs included in the report for Recovery Act work were incurred only to accomplish the Recovery Act work in accordance with the work scope.

G.5 - INDIRECT CHARGES (REVISED 05/22/2009 – M0043)

In accordance with the general principles of the Recovery Act the Contractor must take the following steps to minimize the impacts of indirect costs and enhance transparency and accountability of project:

a. Clearly identify the estimated full cost of projects to include total direct and indirect costs, indirect costs rates, and adjust existing indirect cost rate to account for the material infusion of funds provided in the Recovery Act;

b. Exempt funds from contract cost base for distributing Laboratory Directed Research and Development or similar funds taxing programs;

c. Ensure all funds transferred by the Contractor are completed using the Approved Funding Program process described in Chapter 12 of the Accounting Handbook;

d. The Federal Administrative Charge (FAC) of three percent is waived on reimbursable work funded by the Recovery Act and performed by Departmental Federal offices or UChicago Argonne, LLC; and

e. In all cases listed above and otherwise, the Contractor shall develop and maintain prudent management and good business practices regarding their indirect rate structure as it applies to Recovery Act funding.
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PART I
SECTION H
SPECIAL CONTRACT REQUIREMENTS

CLAUSE H.1 - LABORATORY FACILITIES (REVISED 03/13/2009 – M0039)

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 (REVISED 03/13/2009 – M0039)

(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 PROGRAMS (REVISED 09/28/2009 – M0078)

(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) 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 clauses of the Contract entitled “Changes” and “Work Authorization”.

H-6
(2) The Work Authorizations/Annual Program Letters, and with respect to any work that may be 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 any work that may be 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. However, nothing herein shall preclude DOE from directing a change in or assignment of work pursuant to the “Changes” or the “Work Authorization” clauses of the contract.

(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. However, nothing herein shall preclude DOE from directing a change in or assignment of work pursuant to the “Changes” or the “Work Authorization” clauses of the 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 (REVISED 03/13/2009 – M0039)

(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 (REVISED 03/13/2009 – M0039)

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 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.

(c) Costs associated with ARTS at Argonne, the Argonne Holiday Party, Argonne 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 (REVISED 03/13/2009 – M0039)

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 (REVISED 04/25/2016 – M0761)

(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.
CLAUSE H.8 - CARE OF LABORATORY ANIMALS (REVISED 03/13/2009 – M0039)

(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 (REVISED 03/13/2009 – M0039)

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 (REVISED 03/13/2009 – M0039)

(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 (Argonne) 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.


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 (JAN 2013) DEVIATIONS (AUG 2011)(JUNE 2013), 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 - RESERVED (REVISED 4/25/2016 – M0761)

CLAUSE H.13 - PROTECTION OF HUMAN SUBJECTS (REVISED 03/13/2009 – M0039)

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 (REVISED 03/13/2009 – M0039)
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**

(REVISED 01/24/2012 – M0485)

(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 Performance Evaluation Management Plan in Appendix B. The Contractor shall provide a formal status briefing at mid-year and year-end. Specific due dates and formats for the above-mentioned briefings shall be agreed to by the Laboratory Director and the DOE Argonne Site Office Manager.

(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 - CAP ON LIABILITY (REVISED 02/10/2017 – M0782)

(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 Section I Clause entitled “DEAR 970.5245-1 - Property”, paragraph (f)(1)(i)(C);

(2) The Section I Clause entitled “DEAR 970.5228-1 - Insurance–Litigation and Claims”, paragraph (f), with respect to prudent business judgment only; and
(3) The Section I Clause titled “DEAR 970.5228-1 – Insurance--Litigation and Claims”, (g)(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 Section I Clause entitled, “DEAR 970.5245-1 - Property.”

(b) Unless otherwise prohibited by law or regulation, 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 (1) 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 (REVISED 03/13/2009 – M0039)

(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 (REVISED 03/13/2009 – M0039)

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 (REVISED 03/13/2009 – M0039)

(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 Exempted.** 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 preempt 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 Contractor 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 (REVISED 03/13/2009 – M0039)

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 (REVISED 03/13/2009 – M0039)**

(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 (REVISED 07/07/2015 – M0735)**

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: Joseph Neubauer
Position: Chairman of the Board of Trustees
Organization: The University of Chicago
Address: 5801 South Ellis Avenue
          Edward H. Levi Hall, Suite 503
          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 - EMPLOYEE COMPENSATION: PAY AND BENEFITS (REVISED 12/01/2017 – M0798)

(a) Total Compensation System

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system consistent with FAR 31.205-6 and DEAR 970.3102-05-6; “Compensation for Personal Services” (“Total Compensation System”). DOE-approved standards, if any, shall be applied to the Total Compensation System. The Contractor’s Total Compensation System shall be fully documented, consistently applied, and acceptable to the Contracting Officer. Periodic appraisals of contractor performance with respect to the Contractors’ Total Compensation System will be conducted.

(1) The description of the Contractor Employee Compensation Program should include the following components;

a. Philosophy and strategy for all pay delivery programs.
b. System for establishing a job worth hierarchy.
c. Method for relating internal job worth hierarchy to external market.
d. System that links individual and/or group performance to compensation decisions.
e. Method for planning and monitoring the expenditure of funds.
f. Method for ensuring compliance with applicable laws and regulations.
g. System for communicating the programs to employees.
h. System for internal controls and self-assessment.
i. System to ensure that reimbursement of compensation, including stipends, for employees who are on joint appointments with a parent or other organization shall be on a pro-rated basis.

(b) Reports and Information

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

(1) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.

(2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p)(2)(ii) and their total cash compensation at the time of
Contract award, and at the time of any subsequent change to their total cash compensation.

(3) The Compensation and Benefits Report no later than March 1 of each year.

(c) **Pay and Benefit Programs**

The Contractor shall maintain pay and benefit programs for its employees; provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program. Reimbursement for individual compensation costs incurred after 10/1/2017, is subject to the limits established by 41 USC 4304(a)(16).

(1) **Cash Compensation**

(A) The Contractor shall submit the following, as applicable, to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:

(i) Any proposed major compensation program design changes prior to implementation.

(ii) Variable pay programs/incentives. If not already authorized under Appendix A of the contract, a justification shall be provided with proposed costs and impacts to budget, if any.

(iii) In the absence of Departmental policy to the contrary (e.g., Secretarial pay freeze) a Contractor that meets the criteria, as set forth below, is not required to submit a Compensation Increase Plan (CIP) request to the Contracting Officer for an advance determination of cost allowability for a Merit Increase fund or Promotion/Adjustment fund:

• The Merit Increase fund does not exceed the mean percent increase included in the annual Departmental guidance providing the WorldatWork Salary Budget Survey’s salary increase projected for the CIP year. The Promotion/Adjustment fund does not exceed 1% percent in total.
• The budget used for both Merit Increase funds and Promotion/Adjustment funds shall be based on the payroll for the end of the previous CIP year.
• Salary structure adjustments do not exceed the mean WorldatWork structure adjustments projected for the CIP year and communicated through the annual Department CIP guidance.
Please note: No later than the first day of the CIP cycle, Contractors must provide notification to the Contracting Officer of planned increases and position to market data by mutually agreed-upon employment categories.

If a Contractor does not meet the criteria included in (iii) above, a CIP must be submitted to the Contracting Officer for an advance determination of cost allowability. The Compensation Increase Plan (CIP) for a Contractor that has received Contracting Officer approval for having an Employee Compensation Program with the components identified under (a)(1) above should include the following components and data:

1. Market analysis summary, including a comparison of average pay to market average pay.

2. Merit Fund requests for each Employee Group (i.e., S&E, Administrative, Technical, Exempt/Non-Exempt).

3. Aging factors used for escalating survey data.

4. Projection of escalation in the market.

5. Information to support proposed structure adjustments, if any.

6. Analysis to support special adjustments or promotions that exceed the 1%. Promotion/Adjustment fund authorized under Section III(b)(4) of Appendix A.

7. Discussion of recruitment/retention issues (e.g., turnover and hiring) relevant to the proposed increase amounts.


(iv) Reimbursed salary levels are used to establish the annual CIP fund.

(v) All pay actions granted under the CIP are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end.

(vi) Specific Employee or Payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the Contractor and the Contracting Officer.

(vii) The Contracting Officer may adjust the CIP amount after approval based on major changes in factors that significantly
affect the plan amount (for example, in the event of a major
reduction in force or significant ramp-up).

(viii) The Contractor may expend the total fund approved for each
employment category as needed to support direct pay needs
of that group, however merit funds shall only be used on
increases based on merit.

(ix) The Contractor may make minor shifts of funds between
employment categories (e.g. Scientist/Engineer, Admin,
Exempt, Non-Exempt) after approval of the CIP or if criteria
under (c)(1)(A)(iii) was met, in order to meet the
compensation requirements of its organization, subject to the
following guidelines:

• Minor shift is defined as up to 10% of the approved funds
  from one employment category to another (e.g., 10% of
  Admin merit funds shifted to Technician employment
category).
• Contractors will notify the Contracting Officer that funds
  have been shifted.

(x) Individual compensation actions for the top contractor official
(e.g., laboratory director/plant manager or equivalent) and
Key Personnel not included in the CIP. For those Key
Personnel included in the CIP, DOE will approve salaries
upon the initial contract award and when Key Personnel are
replaced during the life of the contract. DOE will have
access to all individual salary reimbursements. This access
is provided for transparency; DOE will not approve individual
salary actions (except as previously stated).

(B) The Contracting Officer’s approval of individual compensation
actions will be required only for the top contractor official (e.g.,
laboratory director/plant manager or equivalent) and Key Personnel
as stated in (c)(1)(A)(iii) above. The base salary reimbursement
level for the top contractor official establishes the maximum
allowable salary reimbursement under the contract. The contractor
shall not be reimbursed for the top contractor official’s incentive
compensation. The base salary reimbursement level for the top
contractor official establishes the maximum allowable salary
reimbursement under the contract when compared to subordinate
compensation, which would include base salary and any potential
incentive compensation under an incentive compensation
agreement. Unusual circumstances may require a deviation for an
individual on a case-by-case basis. Any such deviations must be
approved by the Contracting Officer.
(C) Severance Pay is not payable to an employee under this Contract if the employee:

(i) Voluntarily separates, resigns or retires from employment, (unless associated with a workforce restructuring action in accordance with Appendix A, Section XII, Reductions in Contractor 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.

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

(d) Pension and Other Benefit Programs

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

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

(3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (A) and (B) below. The studies shall be used by the Contractor in calculating the cost of benefits under existing benefit plans. An Employee Benefits Value (Ben-Val) Study Method using no less than 15 comparator organizations and an Employee Benefits Cost Survey comparison Method shall be used in this evaluation to establish an appropriate comparison method. In addition, the Contractor shall submit updated
studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan which increases costs.

(A) The Ben-Val, every three years for each benefit tier (e.g., group of employees receiving a benefit package based on date of hire), which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Employees measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value studies do not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources and,

(B) An Employee Benefits Cost Study Comparison, annually for each benefit tier that analyzes the Contractor’s employee benefits cost for Employees as a percent of payroll and compares it with the cost as a percent of payroll, including geographic factor adjustments, reported by the U.S. Department of Labor’s Bureau of Labor Statistics or other Contracting Officer approved broad based national survey.

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

(5) When the benefit costs as a percent of payroll exceeds the comparator group by more than five percent, when and if required by the Contracting Officer, the Contractor shall submit an analysis of the specific plan costs that result in or contribute to the percent of payroll exceeding the costs of the comparator group and submit a corrective action plan if directed by the Contracting Officer.

(6) Within two years, or longer period as agreed to between the Contractor and the Contracting Officer, of the Contracting Officer acceptance of the Contractor’s corrective action plan, the Contractor shall align employee benefit programs with the benefit value and the cost as a percent of payroll in accordance with its corrective action plan.

(7) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the Contracting Officer in writing.
(8) Cost reimbursement for post-retirement benefits other than pensions (PRBs) is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service not less than 5 years under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.

(9) Each Contractor sponsoring a Defined Benefit pension plan and/or postretirement benefit plan will participate in the annual plan management process which includes written responses to a questionnaire regarding plan management, providing forecasted estimates of future reimbursements in connection with the plan(s) and participating in a conference call to discuss the Contractor submission.

(10) Each Contractor will respond to quarterly data calls issued through iBenefits, or its successor system.

(e) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs

(1) Employees working for the Contractor shall only accrue credit for service under this Contract after the date of Contract award.

(2) Except for Commingled Plans in existence as of the effective date of the Contract, any pension plan maintained by the Contractor for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan that provides credit for service not performed under a DOE cost-reimbursement contract. When deemed appropriate by the Contracting Officer, Commingled Plans shall be converted to separate plans at the time of new contract award or the extension of a contract.

(f) Basic Requirements

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

(1) The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other PRB plans, as applicable, with responsibility for management and
administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans consistent with the requirements of ERISA and the Internal Revenue Code (IRC). 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.

(2) Each Contractor defined contribution pension plan shall be subjected to a limited-scope audit annually that satisfies the requirements of ERISA section 103. The Contractor must submit the audit results to the Contracting Officer. In addition, the Contractor must provide the Contracting Officer with a copy of the qualified trustee or custodian’s certification regarding the investment information that provides the basis for the plan sponsor to satisfy reporting requirements under ERISA section 104.

While there is no requirement to submit a full scope audit for defined contribution plans, contractors are responsible for maintaining adequate controls for ensuring that defined contribution plan assets are correctly recorded and allocated to plan participants.

(3) The Contractor shall comply with the requirements of ERISA if applicable to the pension plan and any other applicable laws.

(g) Reporting Requirements for Designated Contracts

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

(1) Forms 5500. Copies of IRS Forms 5500 with Schedules for each DOE-funded pension plan, no later than that submitted to the IRS.

(2) Forms 5300. Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin-off, or merger of a plan submitted to the IRS.

(h) Changes to Pension Plans

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

(A) a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout;
(B) except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel used by the plan for purposes of compliance with all legal requirements applicable to private sector defined benefit pension plans;
(C) the Summary Plan Description; and,
(D) any such additional information as requested by the Contracting Officer.

(2) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval, as applicable [see (d)(1) above]. The justification must:

(A) demonstrate the effect of the plan changes on the contract net benefit value or percent of payroll benefit costs,
(B) provide the dollar estimate of savings or costs, and
(C) provide the basis of determining the estimated savings or cost.

(i) Terminating Plans

(1) DOE contractors shall not terminate any pension plan (Commingled or site specific) without requesting Departmental approval at least 60 days prior to the scheduled date of plan termination.

(2) To the extent possible, the Contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market or lump sum payouts. The Contractor shall apply the assumptions and procedures of the Pension Benefit Guaranty Corporation.

(j) Special Programs

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

(k) Definitions

(1) **Commingled Plans.** Cover employees from the Contractor's private
operations and its DOE contract work.

(2) **Current Liability.** The sum of all plan liabilities to employees and their beneficiaries. Current liability includes only benefits accrued to the date of valuation. This liability is commonly expressed as a present value.

(3) **Defined Benefit Pension Plan.** Provides a specific benefit at retirement that is determined pursuant to the formula in the pension plan document.

(4) **Defined Contribution Pension Plan.** Provides benefits to each participant based on the amount held in the participant’s account. Funds in the account may be comprised of employer contributions, employee contributions, investment returns on behalf of that plan participant and/or other amounts credited to the participant’s account.

(5) **Pension Fund.** The portfolio of investments and cash provided by employer and employee contributions and investment returns. A pension fund exists to defray pension plan benefit outlays and (at the option of the plan sponsor) the administrative expenses of the plan.

(6) **Separate Plan.** Must satisfy IRC Sec. 414(l) definition of a single plan, designate assets for the exclusive benefit of employees under DOE contract, exist under a separate plan document (having its own Department of Labor plan number) that is distinct from corporate plan documents and identify the Contractor as the plan sponsor.

**CLAUSE H.22A - LABOR RELATIONS (REVISED 09/30/2013 – M0654)**

(a) 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.

(b) 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 and shall consult with and obtain the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. 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.

(c) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR, Subpart 22.1 and DEAR, Subpart 970.2201 and all applicable Federal and State Labor Relations laws.

(d) The Contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practice, work stoppages, picketing, labor arbitrations, and settlement agreements and will furnish such additional information as may be required from time to time by the Contracting Officer.

(e) The Contractor shall provide copies of collective bargaining agreements to the Contracting Officer as they are ratified or modified.

CLAUSE H.22B - POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS (REVISED 09/30/2013 – M0654)

(a) If this Contract expires or terminates and DOE has awarded a contract under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans covering active or retired contractor employees with respect to service at the Argonne National Laboratory (ANL) (collectively, the “Plans”), the Contractor shall cooperate and transfer to the new contractor its responsibility for sponsorship, management and administration of the Plans consistent with direction from the Contracting Officer. If a Commingled plan is involved, the contractor shall:

(1) Spin off the DOE portion of any Commingled Plan used to cover employees working at the DOE facility into a separate plan. The new plan will normally provide benefits similar to those provided by the commingled plan and shall carry with it the DOE assets on an accrual basis market value, including DOE assets that have accrued in excess of DOE liabilities.

(2) Bargain in good faith with DOE or the successor contractor to determine the assumptions and methods for establishing the liabilities involved in a spinoff. DOE and the contractor(s) shall establish an effective date of spinoff. On or before the same day as the contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.

(b) If this Contract expires or terminates and DOE has not awarded a contract to a new contractor under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, or if the
Contracting Officer determines that the scope of work under the Contract has been completed (any one such event may be deemed by the Contracting Officer to be “Contract Completion” for purposes of this clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this Contract, the following actions shall occur regarding the Contractor’s obligations regarding the Plans at the time of Contract Completion:

(1) Subject of subparagraph (2) below, and notwithstanding any legal obligations independent of the Contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans in accordance with applicable legal requirements.

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

CLAUSE H.23 - CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATIONS OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (REVISED 03/13/2009 – M0039)

(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 (REVISED 03/13/2009 – M0039)

(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
causin 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 (REVISED 09/30/2013 – M0654)

(a) Contractors, other than those whose workers’ compensation coverage is provided through a state funded arrangement or a corporate benefits program, shall submit to the Contracting Officer for approval all new compensation policies and all initial proposals for self-insurance (contractors shall provide copies to the Contracting Officer of all renewal policies for workers compensation).

(b) Workers compensation loss income benefit payments, when supplemented by other programs (such as salary continuation, short-term disability) are to be administered so that total benefit payments from all sources shall not exceed 100 percent of the employee's net pay.

(c) Contractors approve all workers compensation settlement claims up to $100,000.00. Settlement claims above the $100,000 require Contracting Officer approval.

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

CLAUSE H.26 - ADDITIONAL LABOR REQUIREMENTS (REVISED 03/13/2009 – M0039)

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 - RESERVED (REVISED 01/26/2010 – M0140)
CLAUSE H.28 - PERFORMANCE BASED MANAGEMENT AND OVERSIGHT (REVISED 03/13/2009 – M0039)

(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 - LOBBY RESTRICTIONS (CONSOLIDATED AND FURTHER CONTINUING APPROPRIATIONS ACT 2015) (REVISED 04/14/2015 – M0723)

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 (REVISED 03/13/2009 – M0039)

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 (REVISED 03/13/2009 – M0039)**

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist small business 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 (REVISED 03/13/2009 – M0039)**

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 (REVISED 03/13/2009 – M0039)**

(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 Argonne'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 workforce 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://rfpArgonne.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 Argonne 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

(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 (REVISED 03/13/2009 – M0039)

(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 (REVISED 03/13/2009 – M0039)**

(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 (REVISED 03/13/2009 – M0039)**

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 - RESERVED (REVISED 01/24/2012 – M0485)**

**CLAUSE H.38 - RESERVED (REVISED 09/28/2009 – M0078)**

**CLAUSE H.39 - IMPLEMENTATION OF ITER AGREEMENT ANNEX ON INFORMATION AND INTELLECTUAL PROPERTY (REVISED 03/13/2009 – M0039)**

H-41
a. 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.

b. 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.

c. 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.

d. 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.

e. 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 (REVISED 03/13/2009 – M0039)

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 (APR 2009) (REVISED 05/22/2009 – M0043)

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

This clause must be included in every first-tier 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. Where Recovery Act funds are authorized to be used in conjunction with other funding to complete projects, tracking and reporting must be separate from the original funding source 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.

Note: For contractors currently using drawdown on a letter of credit, the current procedure remains in effect and is used for Recovery Act activity in lieu of invoicing.
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](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](http://www.recovery.gov), maintained by the Accountability and Transparency Board (the 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 FAR 52.204-11 American Recovery and Reinvestment Act – Reporting Requirements.

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.

**CLAUSE H.42 - CONTRACTOR ASSURANCE SYSTEM (REVISED 01/26/2010 – M0140)**

(a) The Contractor shall develop a contractor assurance system that is executed by
the Contractor’s Board of Directors (or equivalent corporate oversight entity) and implemented throughout the Contractor’s organization. This system provides reasonable assurance that the objectives of the contractor management systems are being accomplished and that the systems and controls will be effective and efficient. The contractor assurance system, at a minimum, shall include the following key attributes:

(1) A comprehensive description of the assurance system with processes, key activities, and accountabilities clearly identified.

(2) A method for verifying/ensuring effective assurance system processes. Third party audits, peer reviews, independent assessments, and external certification (such as VPP and ISO 9001 or ISO 14001) may be used.

(3) Timely notification to the Contracting Officer of significant assurance system changes prior to the changes.

(4) Rigorous, risk-based, credible self-assessments, and feedback and improvement activities, including utilization of nationally recognized experts, and other independent reviews to assess and improve the Contractor’s work process and to carry out independent risk and vulnerability studies.

(5) Identification and correction of negative performance/compliance trends before they become significant issues.

(6) Integration of the assurance system with other management systems including Integrated Safety Management.

(7) Metrics and targets to assess performance, including benchmarking of key functional areas with other DOE contractors, industry and research institutions. Assure development of metrics and targets that result in efficient and cost effective performance.

(8) Continuous feedback and performance improvement.

(9) An implementation plan (if needed) that considers and mitigates risks.

(10) Timely and appropriate communication to the Contracting Officer, including electronic access, of assurance related information.

The initial contractor assurance system description shall be approved by the Contracting Officer.

(b) The Government may revise its level and/or mix of oversight of this contract when the Contracting Officer determines that the assurance system is or is not operating effectively.
CLAUSE H.43 - CONFERENCE MANAGEMENT (REVISED 09/21/2015 – M0744)

The Contractor agrees that:

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

b) Determination of a Conference.

1) Definition. "Conference" is defined in the Federal Travel Regulation as, "[a] meeting, retreat, seminar, symposium, or event that involves attendee travel. The term 'conference' also applies to training activities that are considered to be conferences under 5 C.F.R 410.404. However, this definition is only a starting point. What constitutes a conference for the purpose of this guidance is a fact-based determination based on an evaluation of the criteria established in this attachment.

2) Additional Indicia of Conferences. Conferences subject to this guidance are also often referred to by names other than “conference.” Other common terms used include conventions, expositions, symposiums, seminars, workshops, or exhibitions. They typically involve topical matters of interest to, and the participation of, multiple agencies and/or nongovernmental participations. Indications of a formal conference often include but are not limited to registration, registration fees, a published substantive agenda, and scheduled speakers, or discussion panels. Individual events may qualify as conferences without meeting all of the indicia listed above, but will generally meet some of them. Please note that some training events may qualify as conferences for the purposes of this guidance, particularly if they take place in a hotel or conference center.

3) Local Conferences. Events within the local duty location that do not require advance travel authorization may also qualify as a conference for the purposes of this guidance if the event exhibits other key indicia of a conference, especially the payment of a registration, exhibitor, sponsor, or conference fee.

4) Exemptions. For the purposes of this guidance, the exemptions below apply and these types of activities should not be considered to be conferences even if the event meets the general definition of conference in section 1 above. Even where an event is considered exempt for this guidance, organizations are expected to continue to apply strict scrutiny to DOE’s participation to ensure the best use of government funds and adherence with not only all applicable laws and policy, but the underlying spirit or principles, include ensuring that only personnel attend events that have a mission-essential need to do so, that expenses be kept to a
minimum, and that participation in any associated social events be limited and restrained to the greatest degree practicable to avoid the appearance of impropriety. Exemptions from this guidance should be granted sparingly and only when events fully meet the definition and intent of the criteria below:

i) Meetings necessary to carry out statutory oversight functions. This exemption would include activities such as investigations, inspections, audits, or non-conference planning site visits.

ii) Meetings to consider internal agency business matters held in Federal facilities. This exemption would include activities such as meetings that take place as part of an organization's regular course of business, do not exhibit indicia of a formal conference as outlined above, and take place in a Federal facility.

iii) Bi-lateral and multi-lateral international cooperation engagements that do not exhibit indicia of a formal conference as outlined above that are focused on diplomatic relations.

iv) Formal classroom training which does not exhibit indicia of a formal conference as outlined above.

v) Meetings such as Advisory Committee and Federal Advisory Committee meetings, Solicitation/Funding Opportunity Announcement Review Board meetings, peer review/objective review panel meetings, evaluation panel/board meetings, and program kick-off and review meetings (including those for grants and contracts).

c) Contractor-sponsored conferences include those events that meet the conference definition and either or both of the following:

1) The Contractor provides funding to plan, promote, or implement an event, except in instances where the Contractor:

i) covers participation costs in a conference for specified individuals (e.g., students, retirees, speakers, etc.) in a total amount not to exceed $10,000 (by individual contractor for a specific conference); or

ii) purchases goods or services from the conference planners (e.g., attendee registration fees, renting booth space).

2) The Contractor authorizes use of the official seal, or other seals/logos/trademarks to promote a conference. Exceptions include non-M&O contractors who use their seal to promote a conference that is unrelated to their DOE contract(s) (e.g., if a DOE IT contractor were to host a general conference on cyber security).

d) Attending a conference, giving a speech or serving as an honorary chairperson does not connote sponsorship.
e) The Contactor will provide information on conferences they plan to sponsor with expected costs exceeding $100,000 in the Department's Conference Management Tool, including:

1) Conference title, description, and date;
2) Location and venue;
3) Description of any unusual expenses (e.g., promotional items);
4) Description of contracting procedures used (e.g., competition for space/support);
5) Costs for space, food/beverages, audio visual, travel/per diem, registration costs, recovered costs (e.g., through exhibit fees); and
6) Number of attendees.

f) The Contractor will not expend funds on the proposed Contractor-sponsored conferences with expenditures estimated to exceed $100,000 until notified of approval by the Contracting Officer.

g) For DOE-sponsored conferences, the Contractor will not expend funds on the proposed conference until notified by the Contracting Officer.

1) DOE-sponsored conferences include events that meet the definition of a conference and where the Department provides funding to plan, promote, or implement the conference and/or authorizes use of the official DOE seal, or other seals/logos/trademarks to promote a conference. Exceptions include instances where DOE:

   i) covers participation costs in a conference for specified individuals (e.g., students, retirees, speakers, etc.) in a total amount not to exceed $10,000 (by individual contractor for a specific conference); or
   
   ii) purchases goods or services from the conference planners (e.g., attendee registration fees, renting booth space); or providing funding to the conference planners through Federal grants.

2) Attending a conference, giving a speech, or serving as an honorary chairperson does not connote sponsorship.

3) The Contractor will provide cost and attendance information on their participation in all DOE-sponsored conference in the DOE Conference Management Tool.
h) For non-Contractor sponsored conferences, the Contractor shall develop and implement a process to ensure costs related to conferences are allowable, allocable, reasonable, and further the mission of DOE/NNSA. This process must at a minimum:

1) Track all conference expenses; and

2) Require the Laboratory Director (or equivalent) or Chief Operating Officer approve a single conference with net costs to the contractor of $100,000 or greater.

i) Contractors are not required to enter information on non-sponsored conferences in DOE’s Conference Management Tool.

j) Once funds have been expended on a non-sponsored conference, contractors may not authorize the use of their trademarks/logos for the conference, provide the conference planners with more than $10,000 for specified individuals to participate in the conference, or provide any other sponsorship funding for the conference. If the Contractor does so, its expenditures for the conference may be deemed unallowable.

**CLAUSE H.44 - RISK MANAGEMENT AND INSURANCE PROGRAMS (REVISED 04/14/2015 – M0723)**

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

1. BASIC REQUIREMENTS

   a. Maintain commercial insurance or a self-insured program, (i.e., any insurance policy or coverage that protects the contractor from the risk of legal liability for adverse actions associated with its operation, including malpractice, injury, or negligence) as required by the terms of the contract. Types of insurance include automobile, general liability, and other third party liability insurance. Other forms of coverage must be justified as necessary in the operation of the Department facility and/or the performance of the contract, and approved by the DOE.

   b. Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (See DEAR 970.5070, Indemnification, and DEAR 950.70, Nuclear Indemnification of DOE Contractors).

d. Demonstrate that the insurance program is being conducted in the government's best interest and at reasonable cost.

e. The contractor shall submit copies of all insurance policies or insurance arrangements to the Contracting Officer no later than 30 days after the purchase date.

f. When purchasing commercial insurance, the contractor shall use a competitive process to ensure costs are reasonable.

g. Ensure self-insurance programs include the following elements:

   (1) Compliance with criteria set forth in FAR 28.308, Self-Insurance. Approval of self-insurance is predicated upon submission of verifiable proof that the self-insurance charge does not exceed the cost of purchased insurance. This includes hybrid plans (i.e., commercially purchased insurance with self-insured retention (SIR) such as large deductible, matching deductible, retrospective rating cash flow plans, and other plans where insurance reserves are under the control of the insured). The SIR components of such plans are self-insurance and are subject to the approval and submission requirements of FAR 28.308, as applicable.

   (2) Demonstration of full compliance with applicable state and federal regulations and related professional administration necessary for participation in alternative insurance programs.

   (3) Safeguards to ensure third party claims and claims settlements are processed in accordance with approved procedures.

   (4) Accounting of self-insurance charges.

   (5) Accrual of self-insurance reserve. The Contracting Officer’s approval is required and predicated upon the following:

      (a) The claims reserve shall be held in a special fund or interest bearing account.

      (b) Submission of a formal written statement to the Contracting Officer stating that use of the reserve is exclusively for the
payment of insurance claims and losses, and that DOE shall receive its equitable share of any excess funds or reserve.

(c) Annual accounting and justification as to the reasonableness of the claims reserve submitted for Contracting Officer's review.

(d) Claim reserves, not payable within the year the loss occurred, are discounted to present value based on the prevailing Treasury rate.

h. Separately identify and account for interest cost on a Letter of Credit used to guarantee self-insured retention, as an unallowable cost and omitted from charges to the DOE contract.

i. Comply with the Contracting Officer's written direction for ensuring the continuation of insurance coverage and settlement of incurred and/or open claims and payments of premiums owed or owing to the insurer for prior DOE contractors.

2. PLAN EXPERIENCE REPORTING. The Contractor shall (except as otherwise approved by the Contracting Officer):

a. provide the Contracting Officer with annual experience reports for each type of insurance (e.g., automobile and general liability), listing the following for each category:

   (1) The amount paid for each claim.

   (2) The amount reserved for each claim.

   (3) The direct expenses related to each claim.

   (4) A summary for the year showing total number of claims.

   (5) A total amount for claims paid.

   (6) A total amount reserved for claims.

   (7) The total amount of direct expenses.

b. provide the Contracting Officer with an annual report of insurance costs and/or self-insurance charges. When applicable, separately identify total policy expenses (e.g., commissions, premiums, and costs for claims servicing) and major claims during the year,
including those expected to become major claims (e.g., those claims valued at $100,000 or greater).

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

3. TERMINATING OPERATIONS. The Contractor shall:

a. ensure protection of the government’s interest through proper recording of cancellation credits due to policy terminations and/or experience rating.

b. identify and provide continuing insurance policy administration and management requirements to a successor, other DOE contractor, or as specified by the Contracting Officer.

c. reach agreement with DOE on the handling and settlement of self-insurance claims incurred but not reported at the time of contract termination; otherwise, the contractor shall retain this liability.

4. SUCCESSOR CONTRACTOR OR INSURANCE POLICY CANCELLATION. The Contractor shall:

a. obtain the written approval of the Contracting Officer for any change in program direction; and

b. ensure insurance coverage replacement is maintained as required and/or approved by the Contracting Officer.

CLAUSE H.45 - MANAGEMENT AND OPERATING CONTRACTOR SUBCONTRACT REPORTING (NOV 2017) (REVISED 12/01/2017 – M0798)

(a) Definitions. As used in this clause—

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

“Management and Operating Contractor Subcontract Reporting Capability (MOSRC)” means a DOE system and associated processes to collect key information about Management and Operating Contractor first-tier subcontracts for reporting to the Small Business Administration.
“Transaction” means any contract, order, other agreement or modification thereof (other than one involving an employer-employee relationship) entered into by a Contractor acquiring for supplies and services (including construction) required solely for performance of the prime contract.

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

CLAUSE H.46 - LOBBYING RESTRICTION (CONSOLIDATED APPROPRIATIONS ACT, 2016) (ADDED 04/25/2016 – M0761)

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.

(End of Clause)

CLAUSE H.47 - PROHIBITION ON FUNDING FOR CERTAIN NONDISCLOSURE AGREEMENTS (ADDED 04/25/2016 – M0761)

The Contractor agrees that:

a. No cost associated with implementation or enforcement of nondisclosure policies, forms or agreements shall be allowable under this contract if such policies, forms or agreements do not contain the following provisions: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling. "

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b. The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

c. Notwithstanding the provisions of paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

CLAUSE H.48 – MULTIFACTOR AUTHENTICATION FOR CONTRACTOR INFORMATION SYSTEMS (JUN 2016) (ADDED 09/30/2016 – M0772)

The Contractor shall take actions to achieve multifactor authentication (MFA) for standard and privileged user accounts for all classified and unclassified networks by September 30, 2016. Any delays that are due to DOE’s failure to provide adequate Government Furnished Equipment in a timely manner will be taken into account in assessing the accomplishment of this requirements.

CLAUSE H.49 - REAL PROPERTY ASSET MANAGEMENT (ADDED 05/16/2017 – M0786)

a. The Contractor shall comply with Departmental requirements and guidance involving the acquisition, management, maintenance, disposition, or disposal of real property assets to ensure that real property assets are available, utilized, and in a suitable condition to accomplish DOE’s missions in a safe, secure, sustainable, and cost-effective manner. Contractors shall meet these functional requirements through tailoring of their business processes and management practices, and use of standard industry practices and standards as applicable. The contractor shall flow down these requirements to subcontracts at any tier to the extent necessary to ensure the contractor’s compliance with the requirements.

b. Contractor shall:
   1. Submit all real estate actions to acquire, utilize, and dispose of real property assets to DOE for review and approval and maintain complete and current real estate records.
   2. Perform physical condition and functional utilization assessments on each real property assets at least once every five-year period or at another risk-
based interval as approved by SC-1 based on industry leading practices, voluntary consensus standards, and customary commercial practices.

3. Establish a maintenance management program including: a computerized maintenance management system (CMMS); a condition assessment system; a master equipment list; maintenance service levels; a method to determine for each asset the minimum acceptable level of condition; methods for categorizing deficiencies as either deferred maintenance and repair (DM) or repair needs; management of the DM backlog; a method to prioritize maintenance work; and a mechanism to track direct and indirect funded expenditures for maintenance, repair, and renovation at the asset level.

4. Maintain Facilities Information Management System (FIMS) data and records for all lands, buildings, trailers, and other structures and facilities. FIMS data must be current and verified annually.
PART II

SECTION I

CONTRACT CLAUSES

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SECTION I

CONTRACT CLAUSES

CLAUSE I.1 - FAR 52.202-1 DEFINITIONS (NOV 2013) (MODIFIED BY DEAR 952.202-1) (REVISED 02/20/2014 – M0670)

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

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

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

(End of clause)

CLAUSE I.2 - FAR 52.203-3 GRATUITIES (APR 1984) (REVISED 02/06/2009 – M0037)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative:

1. Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
2. Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled:
1. To pursue the same remedies as in a breach of the contract; and
2. In addition to any other damages provided by law, to exemplary damages of not less than three (3) nor more than ten (10) times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

CLAUSE I.3 - FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES (MAY 2014)
(REVISED 08/25/2014 – M0693)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) “Bona fide agency,” as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

“Bona fide employee,” as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

“Contingent fee,” as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

“Improper influence,” as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.
CLAUSE I.4 - FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO

(a) Except as provided in paragraph (b) below, the Contractor shall not enter into
any agreement with an actual or prospective Subcontractor, nor otherwise act in
any manner, which has or may have the effect of restricting sales by such
Subcontractors directly to the Government of any item or process (including
computer software) made or furnished by the Subcontractor under this contract
or under any follow-on production contract.

(b) The prohibition in paragraph (a) above does not preclude the Contractor from
asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this Clause, including this
paragraph (c), in all subcontracts under this contract which exceed the simplified
acquisition threshold.

CLAUSE I.5 - FAR 52.203-7 ANTI-KICKBACK PROCEDURES (MAY 2014) (REVISED
08/25/2014 – M0693)

(a) Definitions.

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

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

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

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

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

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

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

(b) 41 U.S.C chapter 87, Kickbacks, prohibits any person from—

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c) (4) (ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c) (4) (i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.
(5) The Contractor agrees to incorporate the substance of this clause, including paragraph (c) (5) but excepting paragraph (c) (1), in all subcontracts under this contract which exceed $150,000.

CLAUSE I.6 - FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014) (REVISED 08/25/2014 – M0693)

(a) If the Government receives information that a contractor or a person has violated 41 U.S.C. 2102-2104, Restrictions on Obtaining and Disclosing Certain Information, the Government may—

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which—

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct violates 41 U.S.C. 2102 for the purpose of either—

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct punishable under 41 U.S.C. 2105(a).

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

CLAUSE I.7 - FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014) (REVISED 08/25/2015 – M0693)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of
the contracting activity or designee determines that there was a violation of 41 U.S.C. 2102 or 2103, as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be—

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or “fee floor” specified in the contract;

(3) For cost-plus-award-fee contracts—

   (i) The base fee established in the contract at the time of contract award;

   (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may—

   (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

   (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.
(c) The Government may, at its election, reduce a prime contractor’s price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the statute by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

CLAUSE I.8 - FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010) (REVISED 11/22/2010 – M0296)

(a) Definitions. As used in this clause—

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

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

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

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

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

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

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

(1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

(3) A special Government employee, as defined in section 202, Title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

“Person” means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

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

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

“Recipient” includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.
“Regularly employed” means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

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

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

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

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

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

(1) **Agency and legislative liaison by Contractor employees.**

(i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.
(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern—

(A) The qualities and characteristics (including individual demonstrations) of the person’s products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person’s products or services for an agency’s use.

(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(2) Professional and technical services.

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a
person requesting or receiving a covered Federal action include consultants and trade associations.

(iii) As used in paragraph (c)(2) of this clause, “professional and technical services” are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) Disclosure.

(1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.
(f) **Cost allowability.** Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(g) **Subcontracts.**

1. The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding $150,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.

2. A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

3. The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding $150,000.


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

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

“Full cooperation”—

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

2. Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require—
(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

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

(3) Does not restrict a Contractor from—

(i) Conducting an internal investigation; or

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

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

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

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

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

(b) Code of business ethics and conduct.

(1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall—

(i) Have a written code of business ethics and conduct;

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

(2) The Contractor shall—

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

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

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

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

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

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

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

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

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

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

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

(2) An internal control system.

(i) The Contractor’s internal control system shall—

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

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

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

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

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

   (C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor’s code of business ethics and conduct and special requirements of Government contracting, including—

       (1) Monitoring and auditing to detect criminal conduct;

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

       (3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the
(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

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

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

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

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

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

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

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

(d) Subcontracts.
(1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of $5.5 million and a performance period of more than 120 days.

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

(End of clause)

CLAUSE I.8B - FAR 52.203-14 DISPLAY OF HOTLINE POSTER(S) (OCT 2015) (AS MODIFIED BY DEAR 903.1004 (FEB 2011) (DEVIATION) (REVISED 04/25/2016 – M0761)

(a) Definition.

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

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

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

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

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

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

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

<table>
<thead>
<tr>
<th>Poster(s)</th>
<th>Obtain from</th>
</tr>
</thead>
<tbody>
<tr>
<td>DOE Hotline Poster</td>
<td><a href="http://ig.energy.gov/hotline.htm">http://ig.energy.gov/hotline.htm</a></td>
</tr>
</tbody>
</table>

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

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed $5.5 million, except when the subcontract—

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

(2) Is performed entirely outside the United States.

(End of clause)


(b) The Contractor shall include the substance of this clause including this paragraph (b) in all subcontracts that are funded in whole or in part with Recovery Act funds.

CLAUSE I.8D - FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (APR 2014) (REVISED 08/25/2014 – M0693)

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

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

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

(a) The Contractor shall not require employees or subcontractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The Contractor shall notify employees that the prohibitions and restrictions of any internal confidentiality agreements covered by this clause are no longer in effect.

(c) The prohibition in paragraph (a) of this clause does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(d)  

1. In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Resolution appropriations Act, 2015 (Pub. L. 113-235), use of funds appropriated (or otherwise made available) under that or any other Act may be prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.

2. The Government may seek any available remedies in the event the contractor fails to comply with the provisions of this clause.

CLAUSE I.9 - FAR 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER (MAY 2011) (REVISED 01/24/2012 – M0485)

(a) Definitions. As used in this clause –

"Postconsumer fiber" means --

1. Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

2. All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

3. Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.
(b) The Contractor is required to submit paper documents, such as offers, letters, or reports that are printed or copied double-sided on paper containing at least 30 percent postconsumer fiber, whenever practicable, when not using electronic commerce methods to submit information or data to the Government.

CLAUSE I.10 - RESERVED (REVISED 01/31/2013 – M0626)

Clause changed from Clause 1.10 - FAR 52.204-7 Central Contractor Registration (FEB 2012) to RESERVED.

CLAUSE I.10A - FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011) (REVISED 06/06/2011 – M0387)


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

   (1) When no longer needed for contract performance.

   (2) Upon completion of the Contractor employee’s employment.

   (3) Upon contract completion or termination.

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

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

CLAUSE I.10B - FAR 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (OCT 2016) (REVISED 02/10/2017 – M0782)

(a) Definitions. As used in this clause:
“Executive” means officers, managing partners, or any other employees in management positions.

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

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

“Total compensation” means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) Salary and bonus.

(2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board’s Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

(3) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

(5) Above-market earnings on deferred compensation which is not tax-qualified.

(6) Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.
(c) Nothing in this clause required the disclosure of classified information.

(d)

(1) Executive compensation of the prime contractor. As a part of its annual registration requirement in the System for Award Management (SAM) database (FAR provision 52.204-7), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for its preceding completed fiscal year, if—

(i) In the Contractor’s preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

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

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

(2) First-tier subcontract information. Unless otherwise directed by the contracting officer, or as provided in paragraph (g) of this clause, by the end of the month following the month of award of a first-tier subcontract with a value of $30,000 or more, the Contractor shall report the following information at http://www.fsrs.gov for that first tier subcontract. (The Contractor shall follow the instruction at http://www.fsrs.gov to report the data.)

(i) Unique entity identifier for the subcontractor receiving the award and for the subcontractor’s parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.
(v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(vi) Subcontract number (the subcontract number assigned by the Contractor).

(vii) Subcontractor’s physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(viii) Subcontractor’s primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(ix) The prime contract number, and order number if applicable.

(x) Awarding agency name and code.

(xi) Funding agency name and code.

(xii) Government contracting office code.

(xiii) Treasury account symbol (TAS) as reported in FPDS.

(xiv) The applicable North American Industry Classification System code (NAICS).

(3) Executive compensation of the first-tier subcontractor. Unless otherwise directed by the Contracting Officer, by the end of the month following the month of award of a first-tier subcontract with a value of $30,000 or more, and annually thereafter (calculated from the prime contract award date), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier subcontractor for the first-tier subcontractor’s preceding completed fiscal year at https://www.fsrs.gov, if—

(i) In the subcontractor’s preceding fiscal year, the subcontractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

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

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

(e) The Contractor shall not split or break down first-tier subcontract awards to a value less than $30,000 to avoid the reporting requirements in paragraph (d) of this clause.

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

(g)

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

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

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

(End of clause)

CLAUSE I.10C - FAR 52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (OCT 2016) (REVISED 02/10/2017 – M0782)

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

“Electronic Funds Transfer (EFT) indicator” means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or
Government entity to establish additional System for Award Management (SAM) records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

“Registered in the System for Award Management (SAM) database” means that—

(1) The Contractor has entered all mandatory information, including the unique entity identifier and the EFT indicator (if applicable), the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14), into the SAM database;

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

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

(4) The Government has marked the record “Active”.

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

(1) Data collected from prospective Federal awardees required for the conduct of business with the Government;

(2) Prospective contractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and

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

“Unique entity identifier” means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b) The Contractor is responsible for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government’s reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, the Contractor is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in the SAM
database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(c)  

(1)  

(i) If a Contractor has legally changed its business name, doing business as name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day’s written notification of its intention to—

(A) Change the name in the SAM database;  

(B) Comply with the requirements of subpart 42.12 of the FAR; and  

(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor shall provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (c)(1)(i) of this clause, or fails to perform the agreement at paragraph (c)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims (see FAR subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the SAM. Information provided to the Contractor’s SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the EFT clause of this contract.

(3) The Contractor shall ensure that the unique entity identifier is maintained with the entity designated at www.sam.gov for establishment of the unique entity identifier throughout the life of the contract. The Contractor shall communicate
any change to the unique entity identifier to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the unique entity identifier does not necessarily require a novation be accomplished.

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

(End of Clause)

CLAUSE I.10D - FAR 52.204-18 COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE (JUL 2015) (REVISED 07/07/2015 – M0735)

(a) Definition. As used in this clause–

“Commercial and Government Entity (CAGE) code” means–

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Contractor and Government Entity (CAGE) Branch to identify a commercial or government entity, or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Contractor and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as an NCAGE code.

(b) Contractors shall ensure that the CAGE code is maintained throughout the life of the contract. For contractors registered in the System for Award Management (SAM), the DLA Contractor and Government Entity (CAGE) Branch shall only modify data received from SAM in the CAGE master file if the contractor initiates those changes via update of its SAM registration. Contractors undergoing a novation or change-of-name agreement shall notify the contracting officer in accordance with Subpart 42.12. The contractor shall communicate any change to the CAGE code to the contracting officer within 30 days after the change, so that a modification can be issued to update the CAGE code on the contract.

(c) Contractors located in the United States or its outlying areas that are not registered in SAM shall submit written change requests to the DLA Contractor and Government Entity (CAGE) Branch. Requests for changes shall be provided on a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code, to the address shown on the back of the DD Form 2051. Change requests to the CAGE master file are accepted from the entity identified by the code.
(d) Contractors located outside the United States and its outlying areas that are not registered in SAM shall contact the appropriate National Codification Bureau or NSPA to request CAGE changes. Points of contact for National Codification Bureaus and NSPA, as well as additional information on obtaining NCAGE codes, are available at http://www.dlis.dla.mil/nato/ObtainCAGE.asp.

(e) Additional guidance for maintaining CAGE codes is available at http://www.dlis.dla.mil/cage_welcome.asp.

CLAUSE I.10E - FAR 52.204-19 INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS (DEC 2014) (REVISED 04/14/2015 – M0723)

The Contractor’s representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

CLAUSE I.10F - FAR 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016) (08/11/2016 – M0768)

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

“Covered contractor information system” means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

“Federal contract information” means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public Web sites) or simple transactional information, such as necessary to process payments.

“Information” means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

“Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

“Safeguarding” means measures or controls that are prescribed to protect information systems.

(b) Safeguarding requirements and procedures.
(1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:

(i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).

(ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.

(iii) Verify and control/limit connections to and use of external information systems.

(iv) Control information posted or processed on publicly accessible information systems.

(v) Identify information system users, processes acting on behalf of users, or devices.

(vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.

(vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.

(viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.

(ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.

(x) Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.

(xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.

(xii) Identify, report, and correct information and information system flaws in a timely manner.
(xiii) Provide protection from malicious code at appropriate locations within organizational information systems.

(xiv) Update malicious code protection mechanisms when new releases are available.

(xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) Other requirements. This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

(c) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the acquisition of commercial items, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

CLAUSE I.11 - FAR 52.208-8 REQUIRED SOURCES FOR HELIUM AND HELIUM USAGE DATA (APR 2014) (REVISED 08/25/2014 – M0693)

(a) Definitions.


“Federal helium supplier” means a private helium vendor that has an in-kind crude helium sales contract with the Bureau of Land Management (BLM) and that is on the BLM Amarillo Field Office’s Authorized List of Federal Helium Suppliers available via the Internet at http://www.blm.gov/nm/st/en/fo/Amarillo_Field_Office.html.

“Major helium requirement” means an estimated refined helium requirement greater than 200,000 standard cubic feet (scf) (measured at 14.7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature) of gaseous helium or 7510 liters of liquid helium delivered to a helium use location per year.

(b) Requirements—
(1) Contractors must purchase major helium requirements from Federal helium suppliers, to the extent that supplies are available.

(2) The Contractor shall provide to the Contracting Officer the following data within 10 days after the Contractor or subcontractor receives a delivery of helium from a Federal helium supplier—

(i) The name of the supplier;

(ii) The amount of helium purchased;

(iii) The delivery date(s); and

(iv) The location where the helium was used.

(c) Subcontracts. The Contractor shall insert this clause, including this paragraph (c), in any subcontract or order that involves a major helium requirement.

CLAUSE 1.12 - FAR 52.209-6 PROTECTING THE GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (OCT 2015) (REVISED 04/25/2016 – M0761)

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

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

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

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

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

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

(b) The Government suspends or debars Contractors to protect the Government’s interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract in excess of $35,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.
(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed $35,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

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

(1) The name of the subcontractor.

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

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

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government’s interests when dealing with such subcontractor in view of the specific basis for the party’s debarment, suspension, or proposed debarment.

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

(1) Exceed $35,000 in value; and

(2) Is not a subcontract for commercially available off-the-shelf items.

(End of Clause)

CLAUSE I.12A - FAR 52.209-9 UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS (JUL 2013) (REVISED 09/30/2013 – M0654)

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

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

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

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

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

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

   (i) Past performance reviews required by subpart 42.15;

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

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

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

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

(2) The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, i.e., for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3) As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.
(d) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

CLAUSE I.12B - FAR 52.209-10 PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS (NOV 2015) (REVISED 04/25/2016 – M0761)

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

“Inverted domestic corporation” means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

“Subsidiary” means an entity in which more than 50 percent of the entity is owned—

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation.

(b) If the contractor reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this contract, the Government may be prohibited from paying for Contractor activities performed after the date when it becomes an inverted domestic corporation or subsidiary. The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

(c) Exceptions to this prohibition are located at 9.108-2.

(d) In the event the Contractor becomes either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation during contract performance, the Contractor shall give written notice to the Contracting Officer within five business days from the date of the inversion event.

(End of clause)

CLAUSE I.12C - FAR 52.210-1 MARKET RESEARCH (APR 2011) (REVISED 08/13/2012 – M0569)

(a) Definitions.

As used in this clause –

“Commercial Item” and “non-developmental item” have the meaning contained in Federal Acquisition Regulation 2.101.
(b) Before awarding subcontracts over the simplified acquisition threshold for items other than commercial items, the Contractor shall conduct market research to –

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

   (i) Meet the agency’s requirements;

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

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

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

**Clause I.13 - FAR 52.211-5 Material Requirements (Aug 2000) (Revised 02/06/2009 – M0037)**

(a) Definitions.

As used in this clause --

"New" means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; provided that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

"Reconditioned" means restored to the original normal operating condition by readjustments and material replacement.

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

"Remanufactured" means factory rebuilt to original specifications.

"Virgin material" means –

(1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.
(b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, reconditioned, or remanufactured, as defined in this clause.

(c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.

(d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to the Contracting Officer for approval.

(e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, may be used in contract performance if the Contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use.

CLAUSE I.14 - FAR 52.215-8 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT (OCT 1997) (REVISED 02/06/2009 – M0037)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications).

(b) Representations and other instructions.

(c) Contract clauses.

(d) Other documents, exhibits, and attachments.

(e) The specifications.


(a) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor’s estimating process such as the judgmental factors
applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontract; or

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


(a) The requirements of paragraphs (b) and (c) of this clause shall—

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor’s estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1 applies.
The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

CLAUSE I.17 - FAR 52.215-14 INTEGRITY OF UNIT PRICES (OCT 2010) (REVISED 11/22/2010 – M0296)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items’ base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of certified cost or pricing data not otherwise required by law or regulation.

(b) When requested by the Contracting Officer, the Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

(c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in FAR Part 2; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.

CLAUSE I.18 - FAR 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997) (REVISED 02/06/2009 – M0037)

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


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

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

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

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

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

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

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

(c) **Reporting.** Required reporting of performance of work by the Contractor or a subcontractor. The Contractor shall notify the Contracting Officer in writing if—

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

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

(d) **Recovery of excessive pass-through charges.** If the Contracting Officer determines that excessive pass-through charges exist;
(1) For other than fixed-price contracts, the excessive pass-through charges are unallowable in accordance with the provisions in FAR subpart 31.2; and

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

(e) Access to records.

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

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

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

CLAUSE I.19 - FAR 52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (OCT 2014) (REVISED 12/02/2014 – M0709)

(a) Definition. See 13 CFR 125.6(e) for definitions of terms used in paragraph (d).

(b) Evaluation preference.

(1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

   (i) Offers from HUBZone small business concerns that have not waived the evaluation preference; and

   (ii) Otherwise successful offers from small business concerns.
(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) When the two highest rated offerors are a HUBZone small business concern and a large business, and the evaluated offer of the HUBZone small business concern is equal to the evaluated offer of the large business after considering the price evaluation preference, award will be made to the HUBZone small business concern.

(c) **Waiver of evaluation preference.** A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraphs (d) and (e) of this clause do not apply if the offeror has waived the evaluation preference.

☐ Offeror elects to waive the evaluation preference.

(d) **Agreement.** A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction.

   (i) At least 15 percent of the cost of contract performance to be incurred for personnel will be spent on the prime contractor’s employees;

   (ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the prime contractor’s employees or on a combination of the prime contractor’s employees and employees of HUBZone small business concern subcontractors;

   (iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns; or

(4) Construction by special trade contractors.
(i) At least 25 percent of the cost of contract performance to be incurred for personnel will be spent on the prime contractor’s employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the prime contractor’s employees or on a combination of the prime contractor’s employees and employees of HUBZone small business concern subcontractors;

(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns.

(e) A HUBZone joint venture agrees that the aggregate of the HUBZone small business concerns to the joint venture, not each concern separately, will perform the applicable percentage of work requirements.

(f) When the total value of the contract exceeds $25,000, a HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business concern manufacturers.

(1) When the total value of the contract is equal to or less than $25,000, a HUBZone small business concern nonmanufacturer may provide end items manufactured by other than a HUBZone small business concern manufacturer provided the end items are produced or manufactured in the United States.

(3) Paragraphs (f)(1) and (f)(2) of this section do not apply in connection with construction or service contracts.

(g) Notice. The HUBZone small business offeror acknowledges that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBZone offeror shall provide the Contracting Officer a copy of the notice required by 13 CFR 126.501 if material changes occur before contract award that could affect its HUBZone eligibility. If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror.
CLAUSE I.20 - FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS
(NOV 2016) (REVISED 02/10/2017 – M0782)

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

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

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

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

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

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

"Small disadvantaged business concern, consistent with 13 CFR 124.1002,” means a small business concern under the size standard applicable to the acquisition, that--

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by--

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13 CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.
“Veteran-owned small business concern” means a small business concern—

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

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern--

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(c) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(d) The Contractor may accept a subcontractor’s written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.
(2) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if--

(i) The subcontractor is registered in SAM; and

(ii) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(3) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(4) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

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

(i) HUBZone small business database search application Web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm; or http://www.sba.gov/hubzone;

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

(iii) The SBA HUBZone Help Desk at hubzone@sba.gov.

(End of clause)

CLAUSE I.21 - FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2017) (REVISED 02/10/2017 – M0782)

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the
State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626 (e)(2).

“Commercial item” means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

“Electronic Subcontracting Reporting System (eSRS)” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at http://www.esrs.gov.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

“Individual subcontracting plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master subcontracting plan” means a subcontracting plan that contains all the required elements of an individual subcontracting plan, except goals, and may be incorporated into individual subcontracting plans, provided the master subcontracting plan has been approved.

“Reduced payment” means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

“Total contract dollars” means the final anticipated dollar value, including the dollar value of all options.
“Untimely payment” means a payment to a subcontractor that is more than 90 days past due under the terms and conditions of a subcontract for supplies and services for which the Government has paid the prime contractor.

(c)

(1) The Offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the Offeror is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The subcontracting plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the Offeror ineligible for award of a contract.

(2)

(i) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if--

(A) The subcontractor is registered in SAM; and

(B) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(iii) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.
(iv) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor’s size or socioeconomic status.

(d) The Offeror’s subcontracting plan shall include the following:

(1) Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626--

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe; and

(ii) Where one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate Contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC’s or the Indian tribe’s written designation within 30 days of the
subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual subcontracting plan; or the Offeror’s total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to --

(i) Small business concerns,

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns, and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, SAM, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern’s size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with --

(i) Small business concerns (including ANC and Indian tribes);

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANC and Indian tribes); and

(vi) Women-owned small business concerns.

(7) The name of the individual employed by the Offeror who will administer the Offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the Offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the Offeror will include the clause of this contract entitled “Utilization of Small Business Concerns” in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $700,000 ($1.5 million for construction of any public facility) with further
subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Offeror will --

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the Offeror with the subcontracting plan;

(iii) After November 30, 2017, include subcontracting data for each order when reporting subcontracting achievements for indefinite-delivery, indefinite-quantity contracts intended for use by multiple agencies;

(iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at http://www.esrs.gov. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by SBA as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(vi) Provide its prime contract number, its DUNS number, and the email address of the Offeror’s official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the email address of the subcontractor’s official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror’s efforts to locate small business, veteran-owned small business, service-disabled
veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than $150,000, indicating --

(A) Whether small business concerns were solicited and if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and if not, why not;

(F) Whether women-owned small business concerns were solicited and if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact --

(A) Trade associations;

(B) Business development organizations;
(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, service-disabled veteran-owned, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through --

(A) Workshops, seminars, training, etc., and

(B) Monitoring performance to evaluate compliance with the program’s requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(12) Assurances that the Offeror will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal. Responding to a request for a quote does not constitute use in preparing a bid or proposal. The Offeror used a small business concern in preparing the bid or proposal if--

(i) The Offeror identifies the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Offeror used the small business concern’s pricing or cost information or technical expertise in preparing the bid or proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the Offeror is awarded the contract.

(13) Assurances that the Contractor will provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (d)(12) of this clause. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

(14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment to or utilization of a subcontractor.
(15) Assurances that the offeror will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the contracting officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see 52.242-5).

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor’s lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all “make-or-buy” decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern in accordance with 52.219-8(d)(2).

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor’s subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, prior to award of the subcontract the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror and if the successful subcontract offeror is a small business, veteran-
owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concern.

(7) Assign each subcontract the NAICS code and corresponding size standard that best describes the principal purpose of the subcontract.

(f) A master subcontracting plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Offeror by this clause; provided --

(1) The master subcontracting plan has been approved;

(2) The Offeror ensures that the master subcontracting plan is updated as necessary and provides copies of the approved master subcontracting plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master subcontracting plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror’s planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor’s commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government’s fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one subcontracting plan. When a modification exceeds the subcontracting plan threshold in 19.702(a), or an option is exercised, the goals of the existing subcontracting plan shall be amended to reflect any new subcontracting opportunities. When the goals in a subcontracting plan are amended, these goal changes do not apply retroactively.
(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled “Utilization Of Small Business Concerns,” or (2) an approved plan required by this clause, shall be a material breach of the contract and may be considered in any past performance evaluation of the Contractor.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at http://www.esrs.gov. Purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor are not included in these reports. Subcontract awards by affiliates shall be treated as subcontract awards by the Contractor. Subcontract award data reported by the Contractor and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

   (1) ISR. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan.

   (i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period. When the Contracting Officer rejects an ISR, the Contractor shall submit a corrected report within 30 days of receiving the notice of ISR rejection.

   (ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal
would be the sum of the goals for the basic contract, the first option, and the second option.

(B) If a subcontracting plan has been added to the contract pursuant to 19.702(a)(3) or 19.301-2(e), the Contractor’s achievements must be reported in the ISR on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

(iii) When a subcontracting plan includes indirect costs in the goals, these costs must be included in this report.

(iv) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) SSR.

(i) Reports submitted under individual contract plans.

(A) This report encompasses all subcontracting under prime contracts and subcontracts with an executive agency, regardless of the dollar value of the subcontracts. This report also includes indirect costs on a prorated basis when the indirect costs are excluded from the subcontracting goals.

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If the Contractor or a subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency’s contracts, provided at least one of that agency’s contracts is over $700,000 (over $1.5 million for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime contractors.

(D) The report shall be submitted annually by October 30 for the twelve month period ending September 30. When a Contracting
Officer rejects an SSR, the Contractor shall submit a revised report within 30 days of receiving the notice of SSR rejection.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan.

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year and all indirect costs.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(End of Clause)

CLAUSE I.22 - FAR 52.219-16 LIQUIDATED DAMAGES - SUBCONTRACTING PLAN (JAN 1999) (REVISED 02/06/2009 – M0037)

(a) "Failure to make a good faith effort to comply with the subcontracting plan," as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion, or in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the
Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled, “Small Business Subcontracting Plan”, the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor’s failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

CLAUSE I.23 - RESERVED (REVISED 12/02/2014 – M0709)

CLAUSE I.23A - FAR 52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (JUL 2013) (REVISED 09/30/2013 – M0654)

(a) Definitions. As used in this clause—

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

Small business concern means a concern, including its affiliates that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of
such a concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall re-represent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts—

   (i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

   (ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) The Contractor shall re-represent its size status in accordance with the size standard in effect at the time of this re-representation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at http://www.sba.gov/content/table-small-business-size-standards.

(d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the representation required by paragraph (b) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor’s current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph
(b) of this clause that the data have been validated or updated, and provide the date of the validation or update.

(f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following re-representation and submit it to the contracting office, along with the contract number and the date on which the re-representation was completed:

The Contractor represents that it _____ is, _____ is not a small business concern under NAICS Code _____________ assigned to contract number ____________.

CLAUSE I.24 - FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997) (REVISED 02/06/2009 – M0037)

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

CLAUSE I.25 - FAR 52.222-3 CONVICT LABOR (JUN 2003) (REVISED 02/06/2009 – M0037)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons –

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if –

(i) The worker is paid or is in an approved work training program on a voluntary basis;
Representatives of local union central bodies or similar labor union organizations have been consulted;

Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

CLAUSE I.26 - FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS - OVERTIME COMPENSATION (MAY 2014) (REVISED 08/25/2014 – M0693)

(a) **Overtime requirements.** No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) **Violation; liability for unpaid wages; liquidated damages.** The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of $10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37).

(c) **Withholding for unpaid wages and liquidated damages.** The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards statute.
(d) Payrolls and basic records.

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a) (3) implementing the Construction Wage Rate Requirements statute.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) Subcontracts. The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

CLAUSE I.27 - FAR 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (MAY 2014) (REVISED 08/25/2014 – M0693)

(a) Definition. “Construction, alteration or repair,” as used in this clause, means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the “site of the work” as defined in the FAR clause at 52.222-6, Construction Wage Rate
Requirements of this contract, and a facility which is dedicated to the
construction of the building or work and is deemed part of the site of the
work within the meaning of paragraph (2) of the “site of the work”
definition; and

(5) Transportation of portions of the building or work between a secondary
site where a significant portion of the building or work is constructed,
which is part of the “site of the work” definition in paragraph (a)(1)(ii) of the
FAR clause at 52.222-6, Construction Wage Rate Requirements, and the
physical place or places where the building or work will remain (paragraph
(a)(1)(i) of the FAR clause at 52.222-6, in the “site of the work” definition).

(b) The Contractor shall insert in any subcontracts for construction, alterations and
repairs within the United States the clauses entitled—

(1) Construction Wage Rate Requirements;

(2) Contract Work Hours and Safety Standards-Overtime Compensation (if
the clause is included in this contract);

(3) Apprentices and Trainees;

(4) Payrolls and Basic Records;

(5) Compliance with Copeland Act Requirements;

(6) Withholding of Funds;

(7) Subcontracts (Labor Standards);

(8) Contract Termination—Debarment;

(9) Disputes Concerning Labor Standards;

(10) Compliance with Construction Wage Rate Requirements and Related
Regulations; and

(11) Certification of Eligibility.

(c) The prime Contractor shall be responsible for compliance by any subcontractor
or lower tier subcontractor performing construction within the United States with
all the contract clauses cited in paragraph (b).

(d) (1) Within 14 days after award of the contract, the Contractor shall deliver to
the Contracting Officer a completed Standard Form (SF) 1413, Statement
and Acknowledgment, for each subcontract for construction within the
United States, including the subcontractor’s signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

CLAUSE I.27A - FAR 52.222-20 CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES AND EQUIPMENT EXCEEDING $15,000 (MAY 2014) (INCLUDED 04/25/2016 – M0761)

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed $15,000, and is subject to 41 U.S.C. chapter 65, the following terms and conditions apply:

(a) All stipulations required by 41 U.S.C. chapter 65 and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and workers with disabilities may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 6508).

(End of Clause)

CLAUSE I.28 - FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015) (REVISED 07/07/2015 – M0735)

(a) Definitions. As used in this clause

“Gender identity” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

“Segregated facilities,” means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for
employees, that are segregated by explicit directive or are in fact segregated on
the basis of race, color, religion, sex, sexual orientation, gender identity, or
national origin because of written or oral policies or employee custom. The term
does not include separate or single-user rest rooms or necessary dressing or
sleeping areas provided to assure privacy between the sexes.

“Sexual orientation” has the meaning given by the Department of Labor’s Office
of Federal Contract Compliance Programs, and is found at
www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

(b) The Contractor agrees that it does not and will not maintain or provide for its
employees any segregated facilities at any of its establishments, and that it does
not and will not permit its employees to perform their services at any location
under its control where segregated facilities are maintained. The Contractor
agrees that a breach of this clause is a violation of the Equal Opportunity clause
in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order
that is subject to the Equal Opportunity clause of this contract.

CLAUSE I.29 - FAR 52.222-26 EQUAL OPPORTUNITY (SEP 2016) (REVISED
02/10/2017 – M0782)

(a) Definitions. As used in this clause—

“Compensation” means any payments made to, or on behalf of, an employee or
offered to an applicant as remuneration for employment, including but not limited
to salary, wages, overtime pay, shift differentials, bonuses, commissions,
vacation and holiday pay, allowances, insurance and other benefits, stock
options and awards, profit sharing, and retirement.

“Compensation information” means the amount and type of compensation
provided to employees or offered to applicants, including, but not limited to, the
desire of the Contractor to attract and retain a particular employee for the value
the employee is perceived to add to the Contractor’s profit or productivity; the
availability of employees with like skills in the marketplace; market research
about the worth of similar jobs in the relevant marketplace; job analysis,
descriptions, and evaluations; salary and pay structures; salary surveys; labor
union agreements; and Contractor decisions, statements and policies related to
setting or altering employee compensation.

“Essential job functions” means the fundamental job duties of the employment
position an individual holds. A job function may be considered essential if—

(1) The access to compensation information is necessary in order to
perform that function or another routinely assigned business task; or
(2) The function or duties of the position include protecting and maintaining the privacy of employee personnel records, including compensation information.

“Gender identity” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

“Sexual orientation” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

“United States” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b)

(1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor’s activities (41 CFR 60-1.5).

(c)

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to --

(i) Employment;
(ii) Upgrading;

(iii) Demotion;

(v) Transfer;

(v) Recruitment or recruitment advertising;

(vi) Layoff or termination;

(vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(5)

(i) The Contractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This prohibition against discrimination does not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(ii) The Contractor shall disseminate the prohibition on discrimination in paragraph (c)(5)(i) of this clause, using language prescribed by the Director of the Office of Federal Contract Compliance Programs (OFCCP), to employees and applicants by--

(A) Incorporation into existing employee manuals or handbooks; and
(B) Electronic posting or by posting a copy of the provision in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers’ representative of the Contractor’s commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(7) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(8) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(9) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the (OFCCP) for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(10) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, in the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(11) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as
amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(12) The Contractor shall take such action with respect to any subcontract or purchase order as the Director of OFCCP may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR part 60-1.

(End of Clause)

CLAUSE I.30 - FAR 52.222-29 NOTIFICATION OF VISA DENIAL (APR 2015) (REVISED 07/07/2015 – M0735)

(a) Definitions. As used in this clause-

“Gender identity” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

“Sexual orientation” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

(b) Requirement to notify.

(1) It is a violation of Executive Order 11246 for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, on the basis that the individual's race, color, religion, sex, sexual orientation, gender identity, or national origin is not compatible with the policies of the country where or for whom the work will be performed (41 CFR 60-1.10).

(2) The Contractor shall notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW, Room 6212, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country where this contract will be performed, and it believes the
denial is attributable to the race, color, religion, sex, sexual orientation,
gender identity, or national origin of the employee or potential employee.

(a) Segregated facilities, as used in this clause, means any waiting rooms, work
areas, rest rooms and wash rooms, restaurants and other eating areas, time
clocks, locker rooms and other storage or dressing areas, parking lots, drinking
fountains, recreation or entertainment areas, transportation, and housing facilities
provided for employees, that are segregated by explicit directive or are in fact
segregated on the basis of race, color, religion, sex, or national origin because of
written or oral policies or employee custom. The term does not include separate
or single-user rest rooms or necessary dressing or sleeping areas provided to
assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its
employees any segregated facilities at any of its establishments, and that it does
not and will not permit its employees to perform their services at any location
under its control where segregated facilities are maintained. The Contractor
agrees that a breach of this clause is a violation of the Equal Opportunity clause
in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order
that is subject to the Equal Opportunity clause of this contract.

CLAUSE I.31 - FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (OCT 2015)
(REvised 04/25/2016 – M0761)

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

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

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

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

(End of Clause)
CLAUSE I.32 - FAR 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUL 2014) (REVISED 08/25/2014 – M0693)

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

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

CLAUSE I.33 - FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS (FEB 2016) (REVISED 04/25/2016 – M0761)

a) Definitions. As used in this clause, “active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” and “recently separated veteran,” have the meanings given in FAR 22.1301.

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on--

(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are protected veterans (i.e., active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans);

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of disabled veterans (i.e., active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans); and

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

(c) The Contractor shall report the above items by filing the VETS-4212 “Federal Contractor Veterans’ Employment Report” (see “VETS-4212 Federal Contractor

(d) The Contractor shall file VETS-4212 Reports no later than September 30 of each year.

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

1. As of the end of any pay period between July 1 and August 31 of the year the report is due; or

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

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

(g) The Contractor shall insert the terms of this clause in subcontracts of $150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of Clause)

**CLAUSE I.34 - FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010) (REVISED 06/06/2011 – M0387)**

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

1. Physical posting of the employee notice shall be in conspicuous places in and about the Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contract.
(2) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any Web site that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster. The link to the Department’s Web site, as referenced in (b)(3) of this section, must read, “Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers.”

(b) This required employee notice, printed by the Department of Labor, may be—

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Provided by the Federal contracting agency if requested;

(3) Downloaded from the Office of Labor-Management Standards Web site at http://www.dol.gov/olms/regs/compliance/EO13496.htm; or

(4) Reproduced and used as exact duplicate copies of the Department of Labor’s official poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart 9.4 Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds $10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to
Section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.

(2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.

(3) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

(4) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

CLAUSE I.34A - FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (MAR 2015) (REVISED 09/21/2015 – M0744)

(a) Definitions. As used in this clause-

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

“Coercion” means-

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

“Commercially available off-the-shelf (COTS) item” means-

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

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

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

   (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Forced Labor” means knowingly providing or obtaining the labor or services of a person-

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

“Involuntary servitude” includes a condition of servitude induced by means of-

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means-

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion
for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

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

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

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

(b) Policy. The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents shall not-

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract;

(3) Use forced labor in the performance of the contract;

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee’s identity or immigration documents, such as passports or drivers’ licenses, regardless of issuing authority;

(5) (i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and work language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant cost to be charged to the employee, and, if applicable, the hazardous nature of the work;

(ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charge employees recruitment fees;
(7) (i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment-

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that-

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is-

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee
relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) **Contractor requirements.** The Contractor shall-

(1) Notify its employees and agents of-

   (i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and

   (ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) **Notification.**

(1) The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of-

   (i) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-13(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and

   (ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one contract, the Contractor shall inform the contracting officer for the contract with the highest dollar value.
(e) **Remedies.** In addition to other remedies available to the Government, the Contractor’s failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in-

1. Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

2. Requiring the Contractor to terminate a subcontract;

3. Suspension of contract payments until the Contractor has taken appropriate remedial action;

4. Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

5. Declining to exercise available options under the contract;

6. Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

7. Suspension or debarment.

(f) **Mitigating and aggravating factors.** When determining remedies, the Contracting Officer may consider the following:

1. **Mitigating factors.** The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

2. **Aggravating factors.** The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) **Full cooperation.**

1. The Contractor shall, at a minimum-

   (i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

   (ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;
(iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not-

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

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

(iii) Restrict the Contractor from-

(A) Conducting an internal investigation; or

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

(h) **Compliance plan.**

(1) This paragraph (h) applies to any portion of the contract that-

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds $500,000.

(2) The Contractor shall maintain a compliance plan during the performance of the contract that is appropriate-

(i) To the size and complexity of the contract; and
(ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.

(3) Minimum requirements. The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform contractor employees about the Government’s policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State’s Office to Monitor and Combat Trafficking in Persons at http://www.state.gov/j/tip/.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at help@befree.org.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) Posting.

(i) The Contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Contractor's Web site (if one is
maintained). If posting at the workplace or on the Web site is impracticable, the Contractor shall provide the relevant contents of the compliance plan to each worker in writing.

(ii) The Contractor shall provide the compliance plan to the Contracting Officer upon request.

(5) Certification. Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that-

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either-

(A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.

(i) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that-

(A) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(B) Has an estimated value that exceeds $500,000.

(2) If any subcontractor is required by this clause to submit a certification, the Contractor shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.
CLAUSE I.34B - FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015) (REVISED 04/25/2016 – M0761)

(a) Definitions. As used in this clause—

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply that is—

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

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

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4) such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

“Employee assigned to the contract” means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

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

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

“United States,” as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.
(b) Enrollment and verification requirements.

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—

(i) **Enroll.** Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) **Verify all new employees.** Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) **Verify employees assigned to the contract.** For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee’s assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(i) **All new employees.**

   (A) **Enrolled 90 calendar days or more.** The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

   (B) **Enrolled less than 90 calendar days.** Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) **Employees assigned to the contract.** For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).
(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) Option to verify employment eligibility of all employees. The Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor’s decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirement of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor’s MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: http://www.dhs.gov/E-Verify.

(d) Individuals previously verified. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—
(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD) -12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) Subcontracts. The contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—

(1) Is for—

   (i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

   (ii) Construction;

(2) Has a value of more than $3,500; and

(3) Includes work performed in the United States.

(End of Clause)

CLAUSE I.34C - FAR 52.223-2 AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (SEP 2013) (REVISED 09/30/2013 – M0654)

(a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless—

   (1) The product cannot be acquired—

      (i) Competitively within a time frame providing for compliance with the contract performance schedule;

      (ii) Meeting contract performance requirements; or

      (iii) At a reasonable price.
(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:

(i) Spacecraft system and launch support equipment.

(ii) Military equipment, i.e., a product or system designed or procured for combat or combat-related missions.

(b) Information about this requirement and these products is available at http://www.biopreferred.gov.

(c) In the performance of this contract, the Contractor shall—

(1) Report to http://www.sam.gov, with a copy to the Contracting Officer, on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30; and

(2) Submit this report no later than—

(i) October 31 of each year during contract performance; and

(ii) At the end of contract performance.

CLAUSE I.35 - FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) (ALTERNATE I) (JULY 1995) (REVISED 02/06/2009 – M0037)

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

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<th>Material (If none, insert &quot;None&quot;)</th>
<th>Identification No.</th>
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(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered non-responsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or Subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to-

   (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with paragraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

CLAUSE I.36 - FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (MAY 2011) (ALTERNATE I) (MAY 2011) (REVISED 08/13/2012 – M0569)

(a) “Toxic chemical” means a chemical or chemical category listed in 40 CFR 372.65.

(b) Federal facilities are required to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050), and the Pollution Prevention Act of 1990 (PPA)(42 U.S.C. 13101-13109).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:
(1) The emergency planning reporting requirements of Section 302 of EPCRA.

(2) The emergency notice requirements of Section 304 of EPCRA.

(3) The list of Material Safety Data Sheets, required by Section 311 of EPCRA.

(4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA.

(5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA.

(6) The toxic chemical and hazardous substance release and use reduction goals of section 2(e) of Executive Order 13423 and of Executive Order 13514.

(7) The environmental management system as described in section 3(b) of E.O. 13423 and 2(j) of E.O. 13514.

CLAUSE I.37 – FAR 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997) (REVISED 02/06/2009 – M0037)

(a) The Contractor shall notify the Contracting Officer or designee, in writing, 30 days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall --

(1) Be submitted in writing;
(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.


(a) Definitions. As used in this clause—

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

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

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

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

(2) Submit this estimate to the Argonne Site Office.

CLAUSE I.39 - FAR 52.223-10 WASTE REDUCTION PROGRAM (MAY 2011) (REVISED 01/24/2012 – M0485)

(a) Definitions. As used in this clause -
"Recycling" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

"Waste prevention" means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

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

(b) Consistent with the requirements of Section 3(e) of Executive Order 13423, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.) and implementing regulations (40 CFR Part 247).

CLAUSE I.40 - FAR 52.223-11 OZONE-DEPLETING SUBSTANCES AND HIGH GLOBAL WARMING POTENTIAL HYDROFLUOROCARBONS (JUN 2016) (REVISED 08/11/2016 – M0768)

(a) Definitions. As used in this clause—

Global warming potential means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

High global warming potential hydrofluorocarbons means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at (http://www.epa.gov/snap/).

Hydrofluorocarbons means compounds that only contain hydrogen, fluorine, and carbon.

Ozone-depleting substance means any substance the Environmental Protection Agency designates in 40 CFR part 82 as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

(b) The Contractor shall label products that contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), (d), and (e) and 40 CFR part 82, subpart E, as follows:

Warning: Contains (or manufactured with, if applicable) *_______, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

(c) Reporting. For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, the Contractor shall—

(1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons contained in the equipment and appliances delivered to the Government under this contract by—

(i) Type of hydrofluorocarbon (e.g., HFC-134a, HFC-125, R-410A, R-404A, etc.);
(ii) Contract number; and
(iii) Equipment/appliance;

(2) Report that information to the Contracting Officer for FY16 and to www.sam.gov, for FY17 and after—

(i) Annually by November 30 of each year during contract performance; and
(ii) At the end of contract performance.

(d) The Contractor shall refer to EPA's SNAP program (available at http://www.epa.gov/snap) to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables available at http://www.epa.gov/snap.

CLAUSE I.41 - FAR 52.223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (JUN 2016) (REVISED 08/11/2016 – M0768)

(a) Definitions. As used in this clause—

Global warming potential means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide’s global warming potential is defined as 1.0.

High global warming potential hydrofluorocarbons means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming...
potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at (http://www.epa.gov/snap/).

Hydrofluorocarbons means compounds that contain only hydrogen, fluorine, and carbon.

(b) The Contractor shall comply with the applicable requirements of sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

(c) Unless otherwise specified in the contract, the Contractor shall reduce the use, release, or emissions of high global warming potential hydrofluorocarbons under this contract by—

(1) Transitioning over time to the use of another acceptable alternative in lieu of high global warming potential hydrofluorocarbons in a particular end use for which EPA's SNAP program has identified other acceptable alternatives that have lower global warming potential.

(2) Preventing and repairing refrigerant leaks through service and maintenance during contract performance;

(3) Implementing recovery, recycling, and responsible disposal programs that avoid release or emissions during equipment service and as the equipment reaches the end of its useful life; and

(4) Using reclaimed hydrofluorocarbons, where feasible.

(d) For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, that will be maintained, serviced, repaired, or disposed under this contract, the Contractor shall—

(1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons added or taken out of equipment or appliances under this contract by—

(i) Type of hydrofluorocarbon (e.g., HFC-134a, HFC-125, R-410A, R-404A, etc.);

(ii) Contract number;

(iii) Equipment/appliance; and

(2) Report that information to the Contracting Officer for FY16 and to www.sam.gov, for FY17 and after—

(i) No later than November 30 of each year during contract performance; and
(ii) At the end of contract performance.

(e) The Contractor shall refer to EPA’s SNAP program to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables available at http://www.epa.gov/snap/.

CLAUSE I.41A - FAR 52.223-13 ACQUISITION OF EPEAT®–REGISTERED IMAGING EQUIPMENT (JUN 2014) (REVISED 08/25/2014 – M0693)

(a) Definitions. As used in this clause—

“Imaging equipment” means the following products:

(1) Copier-A commercially available imaging product with a sole function of the production of hard copy duplicates from graphic hard-copy originals. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as copiers or upgradeable digital copiers (UDCs).

(2) Digital duplicator-A commercially available imaging product that is sold in the market as a fully automated duplicator system through the method of stencil duplicating with digital reproduction functionality. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as digital duplicators.

(3) Facsimile machine (fax machine)-A commercially available imaging product whose primary functions are scanning hard-copy originals for electronic transmission to remote units and receiving similar electronic transmissions to produce hard-copy output. Electronic transmission is primarily over a public telephone system but also may be via computer network or the Internet. The product also may be capable of producing hard copy duplicates. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as fax machines.

(4) Mailing machine-A commercially available imaging product that serves to print postage onto mail pieces. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as mailing machines.

(5) Multifunction device (MFD)-A commercially available imaging product, which is a physically integrated device or a combination of functionally integrated components, that performs two or more of the core functions of copying, printing, scanning, or faxing. The copy functionality as addressed in this definition is considered to be distinct from single-sheet convenience
copying offered by fax machines. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as MFDs or multifunction products.

(6) **Printer**-A commercially available imaging product that serves as a hard-copy output device and is capable of receiving information from single-user or networked computers, or other input devices (e.g., digital cameras). The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as printers, including printers that can be upgraded into MFDs in the field.

(7) **Scanner**-A commercially available imaging product that functions as an electro-optical device for converting information into electronic images that can be stored, edited, converted, or transmitted, primarily in a personal computing environment. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as scanners.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for Contractor use at a Federally controlled facility, only imaging equipment that, at the time of submission of proposals and at the time of award, was EPEAT® bronze-registered or higher.

(c) For information about EPEAT®, see [www.epa.gov/epeat](http://www.epa.gov/epeat).

CLAUSE I.42 - FAR 52.223-14 ACQUISITION OF EPEAT®-REGISTERED TELEVISIONS (JUN 2014) (REVISED 08/25/2014 – M0693)

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

“Television” or “TV” means a commercially available electronic product designed primarily for the reception and display of audiovisual signals received from terrestrial, cable, satellite, Internet Protocol TV (IPTV), or other digital or analog sources. A TV consists of a tuner/receiver and a display encased in a single enclosure. The product usually relies upon a cathode-ray tube (CRT), liquid crystal display (LCD), plasma display, or other display technology. Televisions with computer capability (e.g., computer input port) may be considered to be a TV as long as they are marketed and sold to consumers primarily as televisions.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for Contractor use at a Federally controlled facility, only televisions that, at the time of submission of proposals and at the time of award, were EPEAT® bronze-registered or higher.

(c) For information about EPEAT®, see [www.epa.gov/epeat](http://www.epa.gov/epeat).
CLAUSE I.42A - FAR 52.223-15 ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (DEC 2007) (REVISED 02/06/2009 – M0037)

(a) **Definition**

As used in this clause, “Energy-efficient product” –

(1) Means a product that –

   (i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

   (ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy’s Federal Energy Management Program.

(2) The term “product” does not include any energy-consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b).

(b) The Contractor shall ensure that energy-consuming products are energy efficient products (i.e., ENERGY STAR® products or FEMP-designated products) at the time of contract award, for products that are—

(1) Delivered;

(2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(3) Furnished by the Contractor for use by the Government; or

(4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(c) The requirements of paragraph (b) apply to the Contractor (including any Subcontractor) unless –

(1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or

(2) Otherwise approved in writing by the Contracting Officer.

(d) Information about these products is available for –

(1) ENERGY STAR® at [http://www.energystar.gov/products](http://www.energystar.gov/products); and
(2) FEMP at http://www1.eere.energy.gov/femp/procurement/eep
requirements.html.

CLAUSE I. 42B - FAR 52.223-16 ACQUISITION OF EPEAT®-REGISTERED
PERSONAL COMPUTER PRODUCTS (OCT 2015) (REVISED 04/25/2016 – M0761)

(a) Definitions. As used in this clause—

“Computer” means a device that performs logical operations and processes data. Computers are composed of, at a minimum:

(1) A central processing unit (CPU) to perform operations;

(2) User input devices such as a keyboard, mouse, digitizer, or game controller; and

(3) A computer display screen to output information. Computers include both stationary and portable units, including desktop computers, integrated desktop computers, notebook computers, thin clients, and workstations. Although computers must be capable of using input devices and computer displays, as noted in (2) and (3) above, computer systems do not need to include these devices on shipment to meet this definition. This definition does not include server computers, gaming consoles, mobile telephones, portable hand-held calculators, portable digital assistants (PDAs), MP3 players, or any other mobile computing device with displays less than 4 inches, measured diagonally.

“Computer display” means a display screen and its associated electronics encased in a single housing or within the computer housing (e.g., notebook or integrated desktop computer) that is capable of displaying output information from a computer via one or more inputs such as a VGA, DVI, USB, DisplayPort, and/or IEEE 1394-2008™, Standard for High Performance Serial Bus. Examples of computer display technologies are the cathode-ray tube (CRT) and liquid crystal display (LCD).

“Desktop computer” means a computer where the main unit is intended to be located in a permanent location, often on a desk or on the floor. Desktops are not designed for portability and utilize an external computer display, keyboard, and mouse. Desktops are designed for a broad range of home and office applications.

“Integrated desktop computer” means a desktop system in which the computer and computer display function as a single unit that receives its AC power through a single cable. Integrated desktop computers come in one of two possible forms:

(1) A system where the computer display and computer are physically combined into a single unit; or
(2) A system packaged as a single system where the computer display is separate but is connected to the main chassis by a DC power cord and both the computer and computer display are powered from a single power supply. As a subset of desktop computers, integrated desktop computers are typically designed to provide similar functionality as desktop systems.

“Notebook computer” means a computer designed specifically for portability and to be operated for extended periods of time either with or without a direct connection to an AC power source. Notebooks must utilize an integrated computer display and be capable of operation off of an integrated battery or other portable power source. In addition, most notebooks use an external power supply and have an integrated keyboard and pointing device. Notebook computers are typically designed to provide similar functionality to desktops, including operation of software similar in functionality to that used in desktops. Docking stations are considered accessories for notebook computers, not notebook computers. Tablet PCs, which may use touch-sensitive screens along with, or instead of, other input devices, are considered notebook computers.

“Personal computer product” means a computer, computer display, desktop computer, integrated desktop computer, or notebook computer.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for Contractor use at a Federally controlled facility, only personal computer products that, at the time of submission of proposals and at the time of award, were EPEAT® bronze-registered or higher.

(c) For information about EPEAT®, see www.epa.gov/epeat.

(End of clause)

CLAUSE I.42C - FAR 52.223-17 AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (MAY 2008) (REVISED 01/31/2013 – M0626)

(a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

(1) Competitively within a timeframe providing for compliance with the contract performance schedule;

(2) Meeting contract performance requirements; or

(3) At a reasonable price.
(b) Information about this requirement is available at EPA’s Comprehensive Procurement Guidelines web site, http://www.epa.gov/cpg/. The list of EPA-designated items is available at http://www.epa.gov/cpg/products.htm.

CLAUSE I.42D - FAR 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011) (REVISED 01/31/2013 – M0626)

(a) Definitions. As used in this clause—

"Driving"—

(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

"Text messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, dated October 1, 2009.

(c) The Contractor is encouraged to—

(1) Adopt and enforce policies that ban text messaging while driving—

(i) Company-owned or -rented vehicles or Government-owned vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as—
(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(i) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold.

CLAUSE I.42E - FAR 52.223-19 COMPLIANCE WITH ENVIRONMENTAL MANAGEMENT SYSTEMS (MAY 2011) (REVISED 01/31/2013 – M0626)

The Contractor's work under this contract shall conform with all operational controls identified in the applicable agency or facility Environmental Management Systems and provide monitoring and measurement information necessary for the Government to address environmental performance relative to the goals of the Environmental Management Systems.

CLAUSE I.43 - FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984) (REVISED 02/06/2009 – M0037)

The Contractor will be required to design, develop, or operate a system of records on individuals to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

CLAUSE I.44 - FAR 52.224-2 PRIVACY ACT (APR 1984) (REVISED 02/06/2009 – M0037)

(a) The Contractor agrees to:

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies:

(i) The system of records; and

(ii) The design, development, or operation work that the Contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and
(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c) (1) "Operation of a system of records", as used in this Clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record", as used in this Clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person’s name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this Clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

CLAUSE I.45 - FAR 52.225-1 BUY AMERICAN—SUPPLIES (MAY 2014) (REVISED 08/25/2014 – M0693)

(a) Definitions. As used in this clause—

"Commercially available off-the-shelf (COTS) item"—

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

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

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

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

“Component” means an article, material, or supply incorporated directly into an end product.

“Cost of components” means—

(3) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(4) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Domestic end product” means—

(1) An unmanufactured end product mined or produced in the United States;

(2) An end product manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(ii) The end product is a COTS item.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Foreign end product” means an end product other than a domestic end product.
“United States” means the 50 States, the District of Columbia, and outlying areas.

(b) 41 U.S.C. chapter 83, Buy American, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (See 12.505(a)(1)).

(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled “Buy American Certificate.”

CLAUSE I.45A - FAR 52.225-8 DUTY FREE ENTRY (OCT 2010) (REVISED 09/30/2013 – M0654)

(a) Definition. “Customs territory of the United States” means the States, the District of Columbia, and Puerto Rico.

(b) Except as otherwise approved by the Contracting Officer, the Contractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.

(c) Except as provided in paragraph (d) of this clause or elsewhere in this contract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:

(1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of $15,000 that are to be imported into the customs territory of the United States for delivery to the Government under this contract, either as end products or for incorporation into end products. The Contractor shall furnish the notice to the Contracting Officer at least 20 calendar days before the importation. The notice shall identify the—

(i) Foreign supplies;

(ii) Estimated amount of duty; and

(iii) Country of origin.
(2) The Contracting Officer will determine whether any of these supplies should be accorded duty-free entry and will notify the Contractor within 10 calendar days after receipt of the Contractor’s notification.

(3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.

(d) The Contractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if—

(1) The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(e) The Contractor shall claim duty-free entry only for supplies to be delivered to the Government under this contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Contracting Officer, diverted to nongovernmental use.

(f) The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Contractor in obtaining duty-free entry for these supplies.

(g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the—

(1) Delivery address of the Contractor (or contracting agency, if appropriate);

(2) Government prime contract number;

(3) Identification of carrier;

(4) Notation “UNITED STATES GOVERNMENT, _____ [agency] _____, Duty-free entry to be claimed pursuant to Item No(s) _____ [from Tariff Schedules] _____, Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR Part 142 and notify [cognizant contract administration office] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.”;
(5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(6) Estimated value in United States dollars.

(h) The Contractor shall instruct the foreign supplier to—

(1) Consign the shipment as specified in paragraph (g) of this clause;

(2) Mark all packages with the words “UNITED STATES GOVERNMENT” and the title of the contracting agency; and

(3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

(i) The Contractor shall provide written notice to the cognizant contract administration office immediately after notification by the Contracting Officer that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the—

(1) Foreign supplies;

(2) Country of origin;

(3) Contract number; and

(4) Scheduled delivery date(s).

(j) The Contractor shall include the substance of this clause in any subcontract if—

(1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or

(2) Other foreign supplies in excess of $15,000 may be imported into the customs territory of the United States.

CLAUSE I.46 - FAR 52.225-9 BUY AMERICAN—CONSTRUCTION MATERIALS (MAY 2014) (REVISED 08/25/2014 – M0693)

(a) Definitions. As used in this clause—

"Commercially available off-the-shelf (COTS) item"—

(1) Means any item of supply (including construction material) that is—
(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

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

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

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

“Component” means an article, material, or supply incorporated directly into a construction material.

“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.

“Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Domestic construction material” means—

(1) An unmanufactured construction material mined or produced in the United States;

(2) A construction material manufactured in the United States, if—
(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which non-availability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

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

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

(b) Domestic preference.

(1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.505(a) (2)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b) (2) and (b) (3) of this clause.

(2) This requirement does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows:

NONE

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

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b) (2) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or
(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.

(c) Request for determination of inapplicability of the Buy American statute.

(1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) 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)(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 (whether or not a duty-free certificate may be issued).

(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 the Buy American statute 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)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

(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

<table>
<thead>
<tr>
<th>Construction Material Description</th>
<th>Unit of Measure</th>
<th>Quantity</th>
<th>Price (Dollars)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item 1:</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Foreign construction material</td>
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<td></td>
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<tr>
<td>Domestic construction material</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Item 2:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign construction material</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Domestic construction material</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

[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 and any applicable duty (whether or not a duty-free entry certificate is issued).]


(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC’s implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the
United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC’s List of Specially Designated Nationals and Blocked Persons at http://www.treas.gov/offices/enforcement/ofac/sdn. More information about these restrictions, as well as updates, is available in the OFAC’s regulations at 31 CFR Chapter V and/or on OFAC’s website at http://www.treas.gov/offices/enforcement/ofac.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.


(a) Definitions. As used in this clause—

“Component" means an article, material, or supply incorporated directly into a construction material.

“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.

“Domestic construction material" means the following—

(1) An unmanufactured construction material mined or produced in the United States. (The Buy American statute applies.)

(2) A manufactured construction material that is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States. (Section 1605 of the Recovery Act applies.)

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

"Manufactured construction material” means any construction material that is not unmanufactured 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.

“Unmanufactured construction material” means raw material brought to the construction site for incorporation into the building or work that has not been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(b) Domestic preference.

(1) This clause implements—

(i) Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring, unless an exception applies, that all manufactured construction material in the project is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives); and

(ii) 41 U.S.C chapter 83, Buy American, by providing a preference for unmanufactured construction material mined or produced in the United States over unmanufactured construction material mined or produced in a foreign country.

(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:

_______________________NONE___________________
[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 manufactured construction material, when compared to the cost of comparable foreign manufactured construction material, is unreasonable when the cumulative cost of such material will increase the cost of the contract by more than 25 percent;

(B) The cost of domestic unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of comparable foreign unmanufactured construction 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;

(iii) The application of the restriction of section 1605 of the Recovery Act to a particular manufactured construction material would be inconsistent with the public interest or the application of the Buy American statute to a particular unmanufactured construction material would be impracticable or inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act or the Buy American statute.

(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) Cost;

(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 cost comparison table in the format in paragraph (d) of this clause.

(iii) The cost 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 Recovery Act or the Buy American statute 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 cost 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 Recovery Act or the Buy American statute applies, use of foreign construction material is noncompliant with section 1605 of the American Recovery and Reinvestment Act or the Buy American statute.

(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 COMPARISON

<table>
<thead>
<tr>
<th>Construction Material Description</th>
<th>Unit of Measure</th>
<th>Quantity</th>
<th>Cost (Dollars)*</th>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign construction material</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
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.]

Foreign and Domestic Construction Materials Cost Comparison

CLAUSE I.48 - FAR 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987) (REVISED 02/06/2009 – M0037)

Except for data contained on pages of Volume I, Volume II, and Volume III (except those pages incorporated into the contract), it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data-General" clause contained in this contract) in and to the technical data contained in the proposal dated June 2, 2006, upon which this contract is based.

CLAUSE I.49 - FAR 52.229-8 TAXES -- FOREIGN COST-REIMBURSEMENT CONTRACTS (MAR 1990) (REVISED 02/06/2009 – M0037)

(a) Any tax or duty from which the United States Government is exempt by agreement with the Government of the successor states of the former Soviet Union, (the Ukraine, Belarus, Kazakhstan, Russia, the Baltic States of Latvia and Lithuania, and Uzbekistan) or from which the Contractor or any Subcontractor under this contract is exempt under the laws of the successor states of the former Soviet Union, (the Ukraine, Belarus, Kazakhstan, Russia, the Baltic States of Latvia and Lithuania, and Uzbekistan) shall not constitute an allowable cost under this contract.

(b) If the Contractor or Subcontractor under this contract obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction shall be paid or credited at the time of such offset to the Government of the United States as the Contracting Officer directs.

CLAUSE I.50 - FAR 52.230-2 COST ACCOUNTING STANDARDS (OCT 2015) (REVISED 04/25/2016 – M0761)

a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall --

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor’s cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct
costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor’s cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the Contractor’s signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)

(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor’s established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.
(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C.6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under 41 U.S.C. chapter 71, Contract Disputes.

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor’s award date or if the subcontractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the subcontractor’s signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of $750,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of Clause)

CLAUSE I.51 - FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010) (REVISED 11/22/2010 – M0296)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (b) through (i) and (k) through (n) of this clause:
(a) *Definitions.* As used in this clause—

“Affected CAS-covered contract or subcontract” means a contract or subcontract subject to CAS rules and regulations for which a Contractor or Subcontractor—

1. Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

2. Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

“Cognizant Federal agency official (CFAO)” means the Contracting Officer assigned by the cognizant Federal agency to administer the CAS.

“Desirable change” means a compliant change to a Contractor's established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

“Fixed-price contracts and subcontracts” means—

1. Fixed-price contracts and subcontracts described at FAR 16.202, 16.203, (except when price adjustments are based on actual costs of labor or material, described at 16.203-1(a)(2)), and 16.207;

2. Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (FAR Subpart 16.4);

3. Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (FAR Subpart 16.5); and

4. The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (FAR Subpart 16.6).

“Flexibly-priced contracts and subcontracts” means—

1. Fixed-price contracts and subcontracts described at FAR 16.203-1(a) (2), 16.204, 16.205, and 16.206;

2. Cost-reimbursement contracts and subcontracts (FAR Subpart 16.3);

3. Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (FAR Subpart 16.4);
Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (FAR Subpart 16.5); and

The materials portion of time-and-materials contracts and subcontracts (FAR Subpart 16.6).

"Noncompliance" means a failure in estimating, accumulating, or reporting costs to—

1. Comply with applicable CAS; or
2. Consistently follow disclosed or established cost accounting practices.

"Required change" means—

1. A change in cost accounting practice that a Contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently become applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or

2. A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the Contractor to remain in compliance.

"Unilateral change" means a change in cost accounting practice from one compliant practice to another compliant practice that a Contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

Submit to the CFAO a description of any cost accounting practice change as outlined in paragraphs (b)(1) through (3) of this clause (including revisions to the Disclosure Statement, if applicable), and any written statement that the cost impact of the change is immaterial. If a change in cost accounting practice is implemented without submitting the notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR 52.230-2, Cost Accounting Standards; paragraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; paragraph (a)(4) of the clause at FAR 52.230-4, Disclosure and Consistency of Cost Accounting Practices–Foreign Concerns; or paragraph (a)(2) of the clause at FAR 52.230-5, Cost Accounting Standards–Educational Institution.
(1) When a description has been submitted for a change in cost accounting practice that is dependent on a contract award and that contract is subsequently awarded, notify the CFAO within 15 days after such award.

(2) For any change in cost accounting practice not covered by (b)(1) of this clause that is required in accordance with paragraphs (a)(3) and (a)(4)(i) of the clause at FAR 52.230-2; or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR 52.230-5; submit a description of the change to the CFAO not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change.

(3) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2 and FAR 52.230-5; or with paragraph (a)(3) of the clauses at FAR 52.230-3 and FAR 52.230-4, submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. If the change includes a proposed retroactive date submit supporting rationale.

(4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR 52.230-2 and FAR 52.230-5; or by paragraph (a)(4) of the clauses at FAR 52.230-3 and FAR 52.230-4)—

   (i) Within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after the date of agreement with the CFAO that there is a noncompliance; or

   (ii) In the event of Contractor disagreement, within 60 days after the CFAO notifies the Contractor of the determination of noncompliance.

(c) When requested by the CFAO, submit on or before a date specified by the CFAO—

   (1) A general dollar magnitude (GDM) proposal in accordance with paragraph (d) or (g) of this clause. The Contractor may submit a detailed cost-impact (DCI) proposal in lieu of the requested GDM proposal provided the DCI proposal is in accordance with paragraph (e) or (h) of this clause;

   (2) A detailed cost-impact (DCI) proposal in accordance with paragraph (e) or (h) of this clause;
(3) For any request for a desirable change that is based on the criteria in FAR 30.603-2(b) (3) (ii), the data necessary to demonstrate the required cost savings; and

(4) For any request for a desirable change that is based on criteria other than that in FAR 30.603-2(b) (3) (ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change.

(d) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the GDM proposal shall—

(1) Calculate the cost impact in accordance with paragraph (f) of this clause;

(2) Use one or more of the following methods to determine the increase or decrease in cost accumulations:

   (i) A representative sample of affected CAS-covered contracts and subcontracts.

   (ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:

      (A) Fixed-price contracts and subcontracts.

      (B) Flexibly-priced contracts and subcontracts.

   (iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly-priced contracts and subcontracts;

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

   (i) The estimated increase or decrease in cost accumulations by Executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

      (A) Fixed-price contracts and subcontracts.

      (B) Flexibly-priced contracts and subcontracts.

   (ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:

      (A) Fixed-price contracts and subcontracts.
(B) Flexibly-priced contracts and subcontracts; and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(e) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the DCI proposal shall—

(1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;

(2) Show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to include—

   (i) Only those affected CAS-covered contracts and subcontracts having an estimate to complete exceeding a specified amount; and

   (ii) An estimate of the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (e) (2) (i) of this clause;

(3) Use a format acceptable to the CFAO but, as a minimum, include the information in paragraph (d) (3) of this clause; and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(f) For GDM and DCI proposals that are subject to the requirements of paragraph (d) or (e) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (i.e., open or closed) or the fiscal year in which the costs were incurred (i.e., whether or not the final indirect rates have been established).

(2) For unilateral changes—

   (i) Determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

      (A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government.
(B) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

(ii) Determine the increased or decreased cost to the Government for fixed-priced contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

(iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the cost impact been known at the time the contracts and subcontracts were negotiated; and

(iv) Calculate the increased cost to the Government in the aggregate.

(3) For equitable adjustments for required or desirable changes—

(i) Estimated increased cost accumulations are the basis for increasing contract prices, target prices and cost ceilings; and

(ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, target prices and cost ceilings.

(g) For any noncompliant cost accounting practice subject to paragraph (b) (4) of this clause, prepare the GDM proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Use one or more of the following methods to determine the increase or decrease in contract and subcontract prices or cost accumulations, as applicable:
(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) When the noncompliance involves cost accumulation the change in indirect rates multiplied by the applicable base for only flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease.

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) The increased or decreased cost to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) The total overpayments and underpayments made by the Government during the period of noncompliance.

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

(h) For any noncompliant practice subject to paragraph (b) (4) of this clause, prepare the DCI proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Show the increase or decrease in price and cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to—
(i) Include only those affected CAS-covered contracts and subcontracts having—

(A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and

(B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and

(ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (h)(2)(i) of this clause.

(3) Use a format acceptable to the CFAO that, as a minimum, include the information in paragraph (g) (3) of this clause.

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

(i) For GDM and DCI proposals that are subject to the requirements of paragraph (g) or (h) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (i.e., open or closed) or the fiscal year in which the costs are incurred (i.e., whether or not the final indirect rates have been established).

(2) For noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the Contractor used a compliant practice, the difference is increased cost to the Government.

(ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the Contractor used a compliant practice, the difference is decreased cost to the Government.

(3) For noncompliances that involve accumulating costs, determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:
(i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.

(ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is decreased cost to the Government.

(4) Calculate the total increase or decrease in contract and subcontracts incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the Contractor used a compliant practice.

(5) Calculate the increased cost to the Government in the aggregate.

(j) If the Contractor does not submit the information required by paragraph (b) or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO may take one or both of the following actions:

(1) Withhold an amount not to exceed 10 percent of each subsequent amount payment to the Contractor’s affected CAS-covered contracts, (up to the estimated general dollar magnitude of the cost impact); until such time as the Contractor provides the required information to the CFAO.

(2) Issue a final decision in accordance with FAR 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.

(k) Agree to—

(1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4)(ii) or (a)(5) of the clauses at FAR 52.230-2 and 52.230-5; or with paragraph (a)(3)(i) or (a)(4) of the clauses at FAR 52.230-3 and FAR 52.230-4; and

(2) Repay the Government for any aggregate increased cost paid to the Contractor.
(l) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, 52.230-4, or 52.230-5—

(1) So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);

(2) Include the substance of this clause in all negotiated subcontracts; and

(3) Within 30 days after award of the subcontract, submit the following information to the Contractor’s CFAO:

   (i) Subcontractor’s name and subcontract number.

   (ii) Dollar amount and date of award.

   (iii) Name of Contractor making the award.

(m) Notify the CFAO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment to this contract price or estimated cost and fee. The Contractor shall—

(1) Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and

(2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.

(n) For subcontracts containing the clause or substance of the clause at FAR 52.230-2, FAR 52.230-3, FAR 52.230-4, or FAR 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor’s signed Certificate of Current Cost or Pricing Data, whichever is earlier.

CLAUSE I.52 - FAR 52.232-17 INTEREST (MAY 2014) (REVISED 08/25/2014 – M0693)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Certified Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in paragraph (e) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.
(b) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(c) *Final Decisions.* The Contracting Officer will issue a final decision as required by 33.211 if—

1. The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;
2. The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or
3. The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(d) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(e) Amounts shall be due at the earliest of the following dates:

1. The date fixed under this contract.
2. The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(f) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

1. The date on which the designated office receives payment from the Contractor;
2. The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
3. The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(f) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.
CLAUSE I.53 - FAR 52.232-18 AVAILABILITY OF FUNDS (APR 1984) (REVISED 02/06/2009 – M0037)

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

CLAUSE I.54 - FAR 52.232-24 PROHIBITION OF ASSIGNMENT OF CLAIMS (MAY 2014) (REVISED 08/25/2014 – M0693)

The assignment of claims under the Assignment of Claims Act of 1940 (31 U.S.C. 3727, 41 U.S.C. 6305) is prohibited for this contract.


(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(1) Any such clause is unenforceable against the Government.

(2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.

(3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(b) Paragraph (a) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.
CLAUSE I.54B - FAR 52.232-40 PROVIDING ACCELERATED PAYMENT TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) (REVISED 02/20/2014 – M0670)

(a) Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

CLAUSE I.55 - FAR 52.233-1 DISPUTES (MAY 2014) (ALTERNATE 1) (DEC 1991) (REVISED 08/25/2014 – M0693)

(a) This contract is subject to 41 U.S.C chapter 71, Contract Disputes.

(b) Except as provided in 41 U.S.C chapter 71, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) “Claim,” as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $100,000 is not a claim under 41 U.S.C chapter 71 until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under 41 U.S.C chapter 71. The submission may be converted to a claim under 41 U.S.C chapter 71, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding $100,000.
(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: “I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor.”

(3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of $100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer’s decision shall be final unless the Contractor appeals or files a suit as provided in 41 U.S.C chapter 71.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor’s specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.
CLAUSE I.56 - FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996) (ALTERNATE I) (JUNE 1985) (REVISED 02/06/2009 – M0037)

(a) Upon receipt of a notice of protest (as defined in 33.101 of the FAR) the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either --

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this contract.

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

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within thirty (30) days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

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

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

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this Clause.
If, as the result of the Contractor’s intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs.

**CLAUSE I.57 - FAR 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004) (REVISED 02/06/2009 – M0037)**

United States law will apply to resolve any claim of breach of this contract.

**CLAUSE I.58 - FAR 52.236-8 OTHER CONTRACTS (APR 1984) (REVISED 02/06/2009 – M0037)**

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other Contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other Contractor or by Government employees.

**CLAUSE I.59 - FAR 52.237-3 CONTINUITY OF SERVICES (JAN 1991) (REVISED 02/06/2009 – M0037)**

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another Contractor, may continue them. The Contractor agrees to (1) furnish phase-in training, and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer’s written notice, (1) furnish phase-in, phase-out services for up to ninety (90) days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer’s approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with
these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

CLAUSE I.60 - FAR 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984) (REVISED 02/06/2009 – M0037)

(a) Notwithstanding any other clause of this contract --

(1) The Contracting Officer may, at any time, issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within sixty (60) days, the Contracting Officer shall, within sixty (60) days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

CLAUSE I.60A – FAR 52.242-5 PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (JAN 2017) (ADDED 05/16/2017 – M0786)

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

“Reduced payment” means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.

“Untimely payment” means a payment that is more than 90 days past due under the terms and conditions of a subcontract, for supplies and services for which the Government has paid the prime contractor.

(b) Notice. The Contractor shall notify the Contracting Officer, in writing, not later than 14 days after--
(1) A small business subcontractor was entitled to payment under the terms and conditions of the subcontract; and

(2) The Contractor--

(i) Made a reduced or untimely payment to the small business subcontractor; or

(ii) Failed to make a payment, which is now untimely.

(c) Content of notice. The Contractor shall include the reason(s) for making the reduced or untimely payment in any notice required under paragraph (b) of this clause.

CLAUSE I.61 - FAR 52.242-13 BANKRUPTCY (JUL 1995) (REVISED 02/06/2009 – M0037)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

CLAUSE I.62 - FAR 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996) (REVISED 02/06/2009 – M0037)

(a) The Contractor shall select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

CLAUSE I.63 - FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (JAN 2017) (REVISED 02/10/2017 – M0782)

(a) Definitions. As used in this clause—

*Commercial item* and *commercially available off-the-shelf item* have the meanings contained in Federal Acquisition Regulation 2.101, Definitions.
Subcontract includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

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

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509), if the subcontract exceeds $5.5 million and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.


(iii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017).

(iv) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (June, 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204-21.

(v) 52.219-8, Utilization of Small Business Concerns (OCT 2014) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $700,000 ($1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(vi) 52.222-21, Prohibition of Segregated Facilities (APR 2015).

(vii) 52.222-26, Equal Opportunity (Sept 2016) (E.O. 11246).

(viii) 52.222-35, Equal Opportunity for Veterans (Oct 2015)(38 U.S.C. 4212(a));


(x) 52.222-37, Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212).
(xi) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.


(B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

(xiii) 52.222-55, Minimum Wages under Executive Order 13658 (DEC 2015), if flowdown is required in accordance with paragraph (k) of FAR clause 52.222-55.

(xiv) 52.222-59, Compliance with Labor Laws (Executive Order 13673) (OCT 2016), if the estimated subcontract value exceeds $500,000, and is for other than commercially available off-the-shelf items.

NOTE TO PARAGRAPH (C)(1)(XIV): By a court order issued on October 24, 2016, 52.222-59 is enjoined indefinitely as of the date of the order. The enjoined paragraph will become effective immediately if the court terminates the injunction. At that time, DoD, GSA, and NASA will publish a document in the FEDERAL REGISTER advising the public of the termination of the injunction.

(xv) 52.222-60, Paycheck Transparency (Executive Order 13673) (OCT 2016), if the estimated subcontract value exceeds $500,000, and is for other than commercially available off-the-shelf items.

(xvi) - (A) 52.224-3, Privacy Training (JAN 2017)(5 U.S.C. 552a) if flow down is required in accordance with 52.224-3(f).

(B) Alternate I (JAN 2017) of 52.224-3, if flowdown is required in accordance with 52.224-3(f) and the agency specifies that only its agency-provided training is acceptable."

(xvii) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706), if flowdown is required in accordance with paragraph (m) of FAR clause 52.222-62.


(xix) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (DEC 2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.
(xx) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

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

(End of clause)

CLAUSE I.64 - FAR 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (FEB 2006) (REVISED 02/06/2009 – M0037)

When the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

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

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

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

“Transportation is for the U.S. Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement Contract No. DE-AC02-06CH11357. This may be confirmed by contacting the U.S. Department of Energy, Argonne Site Office, 9800 South Cass Avenue, Argonne, Illinois  60439.”

CLAUSE I.65 - FAR 52.247-63 PREFERENCE FOR U.S. FLAG AIR CARRIERS (JUN 2003) (REVISED 02/06/2009 – M0037)

(a) Definitions. As used in this clause -- International air transportation means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
United States means the 50 States, the District of Columbia, and outlying areas.


(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118)(Fly America-Act) requires that all Federal agencies and Government Contractors and Subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

“STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

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

[State reasons]:

(End of Statement)"

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

CLAUSE I.66 - FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006) (REVISED 02/06/2009 – M0037)

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. App. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50
percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States that may be transported by ocean vessel are –

(1) Acquired for a U.S. Government agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c) (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both –

(i) The Contracting Officer, and

(ii) The: Office of Cargo Preference
        Maritime Administration (MAR-590)
        400 Seventh Street, SW
        Washington DC 20590

Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

(A) Sponsoring U.S. Government agency.

(B) Name of vessel.
(C) Vessel flag of registry.

(D) Date of loading.

(E) Port of loading.

(F) Port of final discharge.

(G) Description of commodity.

(H) Gross weight in pounds and cubic feet if available.

(I) Total ocean freight revenue in U.S. dollars.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).

(e) The requirement in paragraph (a) does not apply to --

(1) Cargoes carried in vessels as required or authorized by law or treaty;

(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and

(4) Subcontracts or purchase orders for the acquisition of commercial items unless –

   (i) This contract is –

      (A) A contract or agreement for ocean transportation services; or

      (B) A construction contract; or

   (ii) The supplies being transported are –

      (A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or
(B) Shipped in direct support of U.S. military –

(1) Contingency operations;

(2) Exercises; or

(3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates
Maritime Administration
400 Seventh Street, SW
Washington DC 20590
Phone: 202-366-2324.

CLAUSE I.67 - FAR 52.247-67 SUBMISSION OF TRANSPORTATION DOCUMENTS FOR AUDIT (FEB 2006) (REVISED 02/06/2009 – M0037)

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

(1) By the Contractor under a cost-reimbursement contract; and

(2) By a first-tier Subcontractor under a cost-reimbursement subcontract there under.

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

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

NOT APPLICABLE

CLAUSE I.68 - FAR 52.249-6 TERMINATION (COST-REIMBURSEMENT)(MAY 2004); MODIFIED BY DEAR 970.4905-1 (DEC 2000) (REVISED 02/06/2009 – M0037)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if --
(1) The Contracting Officer determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government --
(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;

(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and

(iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
(f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

1. All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

2. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (h)(1) of this clause.

3. The reasonable costs of settlement of the work terminated, including--

   i. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

   ii. The termination and settlement of subcontracts (excluding the amounts of such settlements); and

   iii. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts
for the preparation of the Contractor’s termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in Subcontractors’ termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) of this clause.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, as supplemented in Subpart 970.31 of the Department of Energy Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor --

(1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or

(2) The amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted --

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and
(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

CLAUSE I.69 - FAR 52.249-14 - EXCUSABLE DELAYS (APR 1984) (REVISED 02/06/2009 – M0037)

(a) Except for defaults of Subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. “Default” includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a Subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control
of both the Contractor and Subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless --

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.


(a) “Contractor’s principal officials,” as used in this clause, means directors, officers, managers, superintendents, or other representatives supervising or directing –

(1) All or substantially all of the Contractor’s business;

(2) All or substantially all of the Contractor’s operations at any one plant or separate location in which this contract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this contract.

(b) Under Public Law 85-804 (50 U.S.C. 1431-1435) and Executive Order 10789, as amended, and regardless of any other provisions of this contract, the Government shall, subject to the limitations contained in the other paragraphs of this clause, indemnify the Contractor against --

(1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death; personal injury; or loss of, damage to, or loss of use of property;

(2) Loss of, damage to, or loss of use of Contractor property, excluding loss of profit; and
(3) Loss of, damage to, or loss of use of Government property, excluding loss of profit.

(c) This indemnification applies only to the extent that the claim, loss, or damage (1) arises out of or results from a risk defined in this contract as unusually hazardous or nuclear and (2) is not compensated for by insurance or otherwise. Any such claim, loss, or damage, to the extent that it is within the deductible amounts of the Contractor's insurance, is not covered under this clause. If insurance coverage or other financial protection in effect on the date the approving official authorizes use of this clause is reduced, the Government's liability under this clause shall not increase as a result.

(d) When the claim, loss, or damage is caused by willful misconduct or lack of good faith on the part of any of the Contractor's principal officials, the Contractor shall not be indemnified for --

(1) Government claims against the Contractor (other than those arising through subrogation); or

(2) Loss or damage affecting the Contractor's property.

(e) With the Contracting Officer's prior written approval, the Contractor may, in any subcontract under this contract, indemnify the Subcontractor against any risk defined in this contract as unusually hazardous or nuclear. This indemnification shall provide, between the Contractor and the Subcontractor, the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and Government settlement or defense of claims as this clause provides. The Contracting Officer may also approve indemnification of Subcontractors at any lower tier, under the same terms and conditions. The Government shall indemnify the Contractor against liability to Subcontractors incurred under subcontract provisions approved by the Contracting Officer.

(f) The rights and obligations of the parties under this clause shall survive this contract's termination, expiration, or completion. The Government shall make no payment under this clause unless the agency head determines that the amount is just and reasonable. The Government may pay the Contractor or Subcontractors, or may directly pay parties to whom the Contractor or Subcontractors may be liable.

(g) The Contractor shall --

(1) Promptly notify the Contracting Officer of any claim or action against, or any loss by, the Contractor or any Subcontractors that may be reasonably be expected to involve indemnification under this clause;
(2) Immediately furnish to the Government copies of all pertinent papers the Contractor receives;

(3) Furnish evidence or proof of any claim, loss, or damage covered by this clause in the manner and form the Government requires; and

(4) Comply with the Government’s directions and execute any authorizations required in connection with settlement or defense of claims or actions.

(h) The Government may direct, control, or assist in settling or defending any claim or action that may involve indemnification under this clause.

(i) The cost of insurance (including self-insurance programs) covering a risk defined in this contract as unusually hazardous or nuclear shall not be reimbursed except to the extent that the Contracting Officer has required or approved this insurance. The Government’s obligations under this clause are --

(1) Excepted from the release required under this contract’s clause relating to allowable cost; and

(2) Not affected by this contract’s Obligation of Funds clause.

(j) The term “risk defined in this contract as unusually hazardous or nuclear” as used in this clause means the risk of legal liability to third parties (including costs incurred by the Contractor in investigating, settling, or defending claims or suits to which the indemnity under this clause applies but only if such costs are approved by the Secretary or the Secretary’s delegate) arising from actions or inactions in the course of the following work performed by the Contractor under this contract:

(1) Assistance in the redesign of research and test reactors outside the U.S., under the Reduced Enrichment for Research and Test Reactors (RERTR) program (including but not limited to that performed pursuant to the contract between the University of Chicago and Russian Research and Development Institute of Power Engineering (RRDIPE), dated January 17, 1995, and any extension thereto), so that the reactors can use low rather than high-enriched uranium and thus reduce the potential for the loss or diversion of high-enriched uranium;

(2) Assistance in repatriating Russian-origin HEU from research reactors outside the U.S., under the Russian Research Reactor Fuel Return (RRRFR) program;

(3) Assistance in the International Radiological Threat Reduction (IRTR) program;
(4) Assistance in DOE's Material Protection Control and Accountability (MPC&A) program including cooperative work outside the United States on the design and implementation of MPC&A systems for facilities processing, handling, and storing nuclear materials, and the transportation of nuclear materials; provision of U.S.-manufactured equipment, and procurement of equipment for installation in facilities in order to implement the above systems; and training in the design, use and assessment of MPC&A systems; and

(5) As requested or approved by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or an Under Secretary of Energy, provide assistance in other nonproliferation activities outside the United States other than the work identified in (1) through (4) above, provided that the request or approval specifically makes the indemnity provided by this clause applicable thereto.

(6) Participation in tasks or activities by the Contractor or its subcontractors on or after March 11, 2011 that is directed or authorized by the U.S. Department of Energy or the U.S. Department of Energy National Nuclear Security Administration as an element of activities taken in response to the Japanese earthquake and tsunami, including efforts to address and assess damage to nuclear power plants and potential radioactive releases from these plants now and in the future.

(7) Participation in tasks or activities by the Contractor or its subcontractors that is directed or authorized by the U.S. Department of Energy or the U.S. Department of Energy National Nuclear Security Administration to support the implementation of the Joint Comprehensive Plan of Action, as adopted October 18, 2015, as regards the Arak Modernization Project.

CLAUSE I.71 - FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 2012) (DEVIATION) (REVISED 08/13/2012 – M0569)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. The provisions of the clause entitled “DEAR 970.5245-1, Property” shall apply to all property acquired under such authorization.

CLAUSE I.72 - FAR 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991) (REVISED 02/06/2009 – M0037)

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

CLAUSE I.73 - FAR 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984) (REVISED 02/06/2009 – M0037)

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

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

CLAUSE I.74 - FAR 52.253-1 COMPUTER GENERATED FORMS (JAN 1991) (REVISED 02/06/2009 – M0037)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the Parties will be determined based on the content of the required form.

CLAUSE I.75 - DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000) (REVISED 02/06/2009 – M0037)

(a) The Contractor shall comply with the requirements of “DOE Contractor Employee Protection Program” at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

(b) The Contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.
CLAUSE I.76 - DEAR 952.204-2 SECURITY REQUIREMENTS (AUG 2016)
(DEVIAITON) (REVISED 02/10/2017 – M0782)

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

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

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

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

(e) Definition of Formerly Restricted Data. The term "Formerly Restricted Data" means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information: (1) relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on
transmission to other countries or regional defense organizations that apply to Restricted Data.

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

(g) Definition of Special Nuclear Material. The term “special nuclear material” means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which, pursuant to 42 U.S.C. 2071 [section 51 as amended, of the Atomic Energy Act of 1954] has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(h) Access authorizations of personnel.

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

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

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

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

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

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

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

(vi) The Contractor must maintain a record of information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization. Upon request only, the following information will be furnished to the head of the cognizant local DOE Security Office:

A. The date(s) each Review was conducted;
B. Each entity that provided information concerning the individual;

C. A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information collected during the review;

D. A certification that all information collected during the review was reviewed and evaluated in accordance with the Contractor's personnel policies; and

E. The results of the test for illegal drugs.

(i) Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Contractor or any person under the Contractor’s control in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794). Contractors are encouraged to submit this information through the use of the online tool at https://foci.td.anl.gov. When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer.

(j) Foreign Ownership, Control, or Influence.

(1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, Certificate Pertaining to Foreign Interests, executed prior to award of this contract. The Contractor will submit the Foreign Ownership, Control or Influence (FOCI) information in the format directed by DOE. When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer.

(2) If a Contractor has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.
(3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control, or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to protect any classified information or special nuclear material.

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

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

(l) Flow down to subcontracts. The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under its contract that will require Subcontractor employees to possess access authorizations. Additionally, the Contractor must require such Subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, Certificate Pertaining to Foreign Interests, as required in DEAR 952.204-73, Facility Clearance, and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a Subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, Subcontractor means any Subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean Subcontractor and the term "contract" shall mean subcontract.
CLAUSE I.77 - DEAR 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997) (REVISED 02/06/2009 – M0037)

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

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

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

**CLAUSE I.77A - DEAR 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS**  
**(MAR 2011) (REVISED 06/06/2011 – M0387)**

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

(b) The provisions of this clause shall be included in any subcontracts which may involve making unclassified information about nuclear technology available to sensitive foreign nations.

**CLAUSE I.78 - DEAR 952.204-75 PUBLIC AFFAIRS**  
**(DEC 2000) (REVISED 02/06/2009 – M0037)**

(a) The Contractor must cooperate with the Department in releasing unclassified information to the public and news media regarding DOE policies, programs, and activities relating to its effort under the contract. The responsibilities under this clause must be accomplished through coordination with the Contracting Officer and appropriate DOE public affairs personnel in accordance with procedures defined by the Contracting Officer.

(b) The Contractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of unclassified information regarding DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.

(c) The Contractor’s internal procedures must ensure that all releases of information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Contractor’s organization.
(d) The Contractor must comply with established DOE procedures for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.

(e) Unless prohibited by law, and in accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of communications or contacts with Members of Congress relating to the effort performed under the contract.

(f) In accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the contract.

(g) In releases of information to the public and news media, the Contractor must fully and accurately identify the Contractor’s relationship to the Department and fully and accurately credit the Department for its role in funding programs and projects resulting in scientific, technical, and other achievements.

CLAUSE I.78A - DEAR 952.204-77 COMPUTER SECURITY (AUG 2006) (REVISED 06/06/2011 – M0387)

(a) Definitions.

(1) “Computer” means desktop computers, portable computers, computer networks (including the DOE Network and local area networks at or controlled by DOE organizations), network devices, automated information systems, and or other related computer equipment owned by, leased, or operated on behalf of the DOE.

(2) “Individual” means a DOE Contractor or subcontractor employee, or any other person who has been granted access to a DOE computer or to information on a DOE computer, and does not include a member of the public who sends an e-mail message to a DOE computer or who obtains information available to the public on DOE Web sites.

(b) Access to DOE computers. A Contractor shall not allow an individual to have access to information on a DOE computer unless—

(1) The individual has acknowledged in writing that the individual has no expectation of privacy in the use of a DOE computer; and

(2) The individual has consented in writing to permit access by an authorized investigative agency to any DOE computer used during the period of that individual's access to information on a DOE computer, and for a period of three years thereafter.
(c) *No expectation of privacy.* Notwithstanding any other provision of law (including any provision of law enacted by the Electronic Communications Privacy Act of 1986), no individual using a DOE computer shall have any expectation of privacy in the use of that computer.

(d) *Written records.* The Contractor is responsible for maintaining written records for itself and subcontractors demonstrating compliance with the provisions of paragraph (b) of this section. The Contractor agrees to provide access to these records to the DOE, or its authorized agents, upon request.

(e) *Subcontracts.* The Contractor shall insert this clause, including this paragraph (e), in subcontracts under this contract that may provide access to computers owned, leased or operated on behalf of the DOE.

**CLAUSE I.79 - DEAR 952.208-7 TAGGING OF LEASED VEHICLES (APR 1984)**

*REVISED 02/06/2009 – M0037*

(a) DOE intends to use U.S. Government license tags.

(b) While it is the intention that vehicles leased hereunder shall operate on Federal tags, the DOE reserves the right to utilize State tags, if necessary, to accomplish its mission. Should State tags be required, the Contractor shall furnish the DOE the documentation required by the State to acquire such tags.


(a) Purpose. The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Contractor's Work Product.

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

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

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

(2) Access to and use of information.

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

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

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

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

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

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

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

(c) Disclosure after award.

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

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

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

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

(f) Subcontracts.

(1) The Contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with 48 CFR part 13 and involving the performance of advisory and assistance services as that term is defined at 48 CFR 2.101. The terms "contract," "Contractor," and "Contracting Officer" shall be appropriately modified to preserve the Government's rights.

(2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the Contractor shall obtain from the proposed subcontractor or consultant the disclosure required by 48 CFR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor. If the conflict cannot be avoided or neutralized, the Contractor must obtain the approval of the DOE Contracting Officer prior to entering into the subcontract.

CLAUSE I.81 - RESERVED (REVISED 09/28/2009 – M0078)


The Contractor shall follow the provisions of Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700) in obtaining controlled materials and other products and materials needed to fill this contract.

CLAUSE I.83 - DEAR 952.215-70 KEY PERSONNEL (DEC 2000) (REVISED 02/06/2009 – M0037)

(a) The personnel listed in Section J.5, Appendix E – Key Personnel are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must:

(1) Notify the Contracting Officer reasonably in advance;

(2) Submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and
(3) Obtain the Contracting Officer’s written approval.

Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at DEAR 970.5203-3, Contractor’s Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.

(b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

**CLAUSE I.84 - DEAR 952.217-70 ACQUISITION OF REAL PROPERTY (MAR 2011)**
(REvised 06/06/2011 – M0387)

(a) Notwithstanding any other provision of the contract, the prior approval of the Contracting Officer shall be obtained when, in performance of this contract, the Contractor acquires or proposes to acquire use of real property by:

(1) Purchase, on the Government’s behalf or in the Contractor’s own name, with title eventually vesting in the Government.

(2) Lease for which the Department of Energy will reimburse the incurred costs as a reimbursable contract cost.

(3) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.

(b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the Contracting Officer.

(c) The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

**CLAUSE I.85 - DEAR 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984)**
(REvised 04/14/2015 – M0723)

Individual occupational radiation exposure records generated in the performance of work under this contract shall be generated and maintained by the contractor in accordance with 36 CFR Chapter XII, Subchapter B, “Records Management,” the National Archives and Records Administration (NARA)-approved DOE Records
Disposition Schedules, and shall be operated as a DOE Privacy Act system of records, in accordance with the Privacy Act.

CLAUSE I.86 - RESERVED (REVISED 06/06/2011 – M0387)

CLAUSE I.87 - DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997) (REVISED 02/06/2009 – M0037)

(a) Definition.

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

(b) Consistent with Department of Energy guidance for Contractor work force restructuring, as may be amended or supplemented from time to time, the Contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.

(c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed $500,000.

CLAUSE I.88 - DEAR 952.235-71 RESEARCH MISCONDUCT (JUL 2005) (REVISED 02/06/2009 – M0037)

(a) The Contractor is responsible for maintaining the integrity of research performed pursuant to this contract award including the prevention, detection, and remediation of research misconduct as defined by this clause, and the conduct of inquiries, investigations, and adjudication of allegations of research misconduct in accordance with the requirements of this clause.

(b) Unless otherwise instructed by the Contracting Officer, the Contractor must conduct an initial inquiry into any allegation of research misconduct. If the Contractor determines that there is sufficient evidence to proceed to an investigation, it must notify the Contracting Officer and, unless otherwise instructed, the Contractor must:

(1) Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research
misconduct and an identification of appropriate remedies or a determination that no further action is warranted;

(2) If the investigation leads to a finding of research misconduct, conduct an adjudication by a responsible official who was not involved in the inquiry or investigation and is separated organizationally from the element which conducted the investigation. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.

(3) Inform the Contracting Officer if an initial inquiry supports a formal investigation and, if requested by the Contracting Officer thereafter, keep the Contracting Officer informed of the results of the investigation and any subsequent adjudication. When an investigation is complete, the Contractor will forward to the Contracting Officer a copy of the evidentiary record, the investigative report, any recommendations made to the Contractor's adjudicating official, the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response (if any).

(c) The Department of Energy (DOE) may elect to act in lieu of the Contractor in conducting an inquiry or investigation into an allegation of research misconduct if the Contracting Officer finds that -

(1) The research organization is not prepared to handle the allegation in a manner consistent with this clause;

(2) The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;

(3) DOE involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest; or

(4) The allegation involves possible criminal misconduct.

(d) In conducting the activities under paragraphs (b) and (c) of this clause, the Contractor and the Department, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:

(1) Safeguards for information and subjects of allegations. The Contractor shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the Contractor without suffering retribution. Safeguards include: protection against retaliation; fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The Contractor shall also provide the subjects of allegations confidence that their rights are protected and that the mere filing of an allegation of
research misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations against them, a description of the allegation and reasonable access to any evidence submitted to support the allegation or developed in response to an allegation and notice of any findings of research misconduct.

(2) Objectivity and Expertise. The Contractor shall select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct who have appropriate expertise and have no unresolved conflict of interest. The individual(s) who conducts an adjudication must not be the same individual(s) who conducted the inquiry or investigation, and must be separate organizationally from the element that conducted the inquiry or investigation.

(3) Timeliness. The Contractor shall coordinate, inquire, investigate and adjudicate allegations of research misconduct promptly, but thoroughly. Generally, an investigation should be completed within 120 days of initiation, and adjudication should be complete within 60 days of receipt of the record of investigation.

(4) Confidentiality. To the extent possible, consistent with fair and thorough processing of allegations of research misconduct and applicable law and regulation, knowledge about the identity of the subjects of allegations and informants should be limited to those with a need to know.

(5) Remediation and Sanction. If the Contractor finds that research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process. The Contractor must take all necessary corrective actions. Such action may include but are not limited to, correcting the research record and as appropriate imposing restrictions, controls, or other parameters on research in process or to be conducted in the future. The Contractor must coordinate remedial actions with the Contracting Officer. The Contractor must also consider whether personnel sanctions are appropriate. Any such sanction must be considered and effected consistent with any applicable personnel laws, policies, and procedures, and shall take into account the seriousness of the misconduct and its impact, whether it was done knowingly or intentionally, and whether it was an isolated event or pattern of conduct.

(e) DOE reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms and conditions of the award instrument and applicable laws and regulations. However, the Contractor’s good faith administration of this clause and the effectiveness of its remedial actions and sanctions shall be positive considerations and shall be taken into account as mitigating factors in assessing the need for such actions. If DOE pursues any
such action, it will inform the subject of the action of the outcome and any applicable appeal procedures.

(f) Definitions.

“Adjudication” means a formal review of a record of investigation of alleged research misconduct to determine whether and what corrective actions and sanctions should be taken.

“Fabrication” means making up data or results and recording or reporting them.

“Falsification” means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

“Finding of Research Misconduct” means a determination, based on a preponderance of the evidence that research misconduct has occurred. Such a finding requires a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.

“Inquiry” means information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

“Investigation” means the formal examination and evaluation of the relevant facts.

“Plagiarism” means the appropriation of another person’s ideas, processes, results, or words without giving appropriate credit. Research means all basic, applied, and demonstration research in all fields of science, medicine, engineering, and mathematics, including, but not limited to, research in economics, education, linguistics, medicine, psychology, social sciences statistics, and research involving human subjects or animals. Research Misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, but does not include honest error or differences of opinion.

“Research record” means the record of all data or results that embody the facts resulting from scientists’ inquiries, including, but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

(g) By executing this contract, the Contractor provides its assurance that it has established an administrative process for performing an inquiry, mediating if possible, or investigating, and reporting allegations of research misconduct; and that it will comply with its own administrative process and the requirements of 10
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CFR part 733 for performing an inquiry, possible mediation, investigation and reporting of research misconduct.

(h) The Contractor must insert or have inserted the substance of this clause, including paragraph (g), in subcontracts at all tiers that involve research.

CLAUSE I.89 - DEAR 952.242-70 TECHNICAL DIRECTION (DEC 2000) (REVISED 02/06/2009 – M0037)

(a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer’s Representative (COR). The term "technical direction" is defined to include, without limitation:

(1) Providing direction to the Contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.

(2) Providing written information to the Contractor that assists in interpreting drawings, specifications, or technical portions of the work description.

(3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the Contractor to the Government.

(b) The Contractor will receive a copy of the written COR designation from the Contracting Officer. It will specify the extent of the COR’s authority to act on behalf of the Contracting Officer.

(c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that -

(1) Constitutes an assignment of additional work outside the Statement of Work;

(2) Constitutes a change as defined in the contract clause entitled "Changes;"

(3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions or specifications of the contract; or

(5) Interferes with the Contractor’s right to perform the terms and conditions of the contract.
(d) All technical direction shall be issued in writing by the COR.

(e) The Contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the Contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer must:

1. Advise the Contractor in writing within thirty (30) days after receipt of the Contractor’s letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;

2. Advise the Contractor in writing within a reasonable time that the Government will issue a written change order; or

3. Advise the Contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.

(f) A failure of the Contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled "Disputes."


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


(a) **Authority.** This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)

(b) **Definitions.** The definitions set out in the Act shall apply to this clause.
(c) **Financial protection.** Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.

(d) (1) **Indemnification.** To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170d. of the Act, as that amount may be increased in accordance with section 170t., in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or $500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e) (1) **Waiver of Defenses.** In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.

(2) In the event of an extraordinary nuclear occurrence which:

(i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

(ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or

(iii) Arises out of or results from the possession, operation, or use by the Contractor or a Subcontractor of a device utilizing special
nuclear material or by-product material, during the course of the contract activity; or

(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive:

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to -

(1) Negligence;

(2) Contributory negligence;

(3) Assumption of risk; or

(4) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

(B) Any issue or defense as to charitable or governmental immunity; and

(C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(v) The term *extraordinary nuclear occurrence* means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.

(vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any Contractor-owned or controlled facility, installation, or site at which
the Contractor is engaged in the performance of contractual activity under this contract.

(3) The waivers set forth above -

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefore are either payable or required to be provided under any workmen's compensation or occupational disease law;

(vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and

(viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) **Notification and litigation of claims.** The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the
settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this contract.

(h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

(i) Civil penalties. The Contractor and its Subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders. If the Contractor is a not-for-profit Contractor, as defined by section 234Ad.(2), the total amount of civil penalties paid shall not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under this contract.

(j) Criminal penalties. Any individual director, officer, or employee of the Contractor or of its Subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to section 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.

(k) Inclusion in subcontracts. The Contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the Subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under
section 170b of the Act or NRC agreements of indemnification under section 170c or k of the Act for the activities under the subcontract.


(a) The Contractor shall take advantage of travel discounts offered to Federal Contractor employee travelers by AMTRAK, hotels, motels, or car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available. Vendors providing these services may require the Contractor employee to furnish them a letter of identification signed by the authorized Contracting Officer.

(b) Contracted airlines. Contractors are not eligible for GSA contract city pair fares.

(c) Discount rail service. AMTRAK voluntarily offers discounts to Federal travelers on official business and sometimes extends those discounts to Federal contractor employees.

(d) Hotels/motels. Many lodging providers extend their discount rates for Federal employees to Federal contractor employees.

(e) Car rentals. Surface Deployment and Distribution Command (SDDC) of the Department of Defense negotiates rate agreements with car rental companies that are available to Federal travelers on official business. Some car rental companies extend those discounts to Federal contractor employees.

(f) Obtaining travel discounts.

(1) To determine which vendors offer discounts to Government contractors, the Contractor may review commercial publications such as the Official Airline guides Official Traveler, Innovata, or National Telecommunications. The Contractor may also obtain this information from GSA contract Travel Management Centers or the Department of Defense's Commercial Travel Offices.

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

OFFICIAL AGENCY LETTERHEAD

TO: Participating Vendor

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

SIGNATURE, Title and telephone number of Contracting Officer


(a) (1) The Contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted including consideration of outsourcing of functions by management to reasonably ensure that: the mission and functions assigned to the Contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the Contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely.

(2) The systems of controls employed by the Contractor shall be documented and satisfactory to DOE.

(3) Such systems shall be an integral part of the Contractor’s management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility.

(4) The Contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively. Annually, or at other intervals directed
by the Contracting Officer, the Contractor shall supply to the Contracting Officer copies of the reports reflecting the status of recommendations resulting from management audits performed by its internal audit activity and any other audit organization. This requirement may be satisfied in part by the reports required under paragraph (i) of 48 CFR 970.5232-3, Accounts, Records, and Inspection.

(b) The Contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

CLAUSE I.94 - DEAR 970.5203-2 PERFORMANCE IMPROVEMENT AND COLLABORATION (MAY 2006) (REVISED 02/06/2009 – M0037)

(a) The Contractor agrees that it shall affirmatively identify, evaluate, and institute practices, where appropriate, that will improve performance in the areas of environmental and health, safety, scientific and technical, security, business and administrative, and any other areas of performance in the management and operation of the contract. This may entail the alteration of existing practices or the institution of new procedures to more effectively or efficiently perform any aspect of contract performance or reduce overall cost of operation under the contract. Such improvements may result from changes in organization, outsourcing decisions, simplification of systems while retaining necessary controls, or any other approaches consistent with the statement of work and performance measures of this contract.

(b) The Contractor agrees to work collaboratively with the Department, all other management and operating, DOE major facilities management Contractors and affiliated Contractors which manage or operate DOE sites or facilities for the following purposes: (i) to exchange information generally, (ii) to evaluate concepts that may be of benefit in resolving common issues, in confronting common problems, or in reducing costs of operations, and (iii) to otherwise identify and implement DOE-complex-wide management improvements discussed in paragraph (a). In doing so, it shall also affirmatively provide information relating to its management improvements to such Contractors, including lessons learned, subject to security considerations and the protection of data proprietary to third parties.

(c) The Contractor may consult with the Contracting Officer in those instances in which improvements being considered pursuant to paragraph (a) involve the cooperation of the DOE. The Contractor may request the assistance of the Contracting Officer in the communication of the success of improvements to other management and operating Contractors in accordance with paragraph (b) of this clause.
(d) The Contractor shall notify the Contracting Officer and seek approval where necessary to fulfill its obligations under the contract. Compliance with this clause in no way alters the obligations of the Contractor under any other provision of this contract.

CLAUSE I.95 - DEAR 970.5203-3 CONTRACTOR’S ORGANIZATION (DEC 2000) (REVISED 02/06/2009 – M0037)

(a) Organization chart. As promptly as possible after the execution of this contract, the Contractor shall furnish to the Contracting Officer a chart showing the names, duties, and organization of key personnel (see 48 CFR 952.215-70) and managerial personnel (see 48 CFR 970.5245-1 (j)) to be employed in connection with the work, and shall furnish supplemental information to reflect any changes as they occur.

(b) Supervisory representative of Contractor. Unless otherwise directed by the Contracting Officer, a competent full-time resident supervisory representative of the Contractor satisfactory to the Contracting Officer shall be in charge of the work at the site, and any work off-site, at all times.

(c) Control of employees. The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the Contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be inimical to the Department's mission, the Contracting Officer may require, with the approval of the Secretary of Energy, the Contractor to remove the employee from work under the contract. This includes the right to direct the Contractor to remove its most senior key person from work under the contract for serious contract performance deficiencies.

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

CLAUSE I.96 – DEAR 970.5204-1 COUNTERINTELLIGENCE (DEC 2010) (REVISED 06/06/2011 – M0387)

(a) The Contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 475.1, Counterintelligence Program; or its successor, Executive
Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.

(b) The Contractor shall appoint a qualified employee(s) to function as the Contractor Counterintelligence Officer. The Contractor Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of Counterintelligence interest; immediately reporting targeting, suspicious activity and other Counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

CLAUSE I.97 - DEAR 970.5204-2 LAWS, REGULATIONS AND DOE DIRECTIVES
(DEC 2000) (DEVIATION) (REVISED 02/06/2009 – M0037)

(a) In performing work under this contract, the Contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and Regulations (Appendix I/List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from Appendix I/List A does not affect the obligation of the Contractor to comply with such law or regulation pursuant to this paragraph.

(b) 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”, 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 in the clause of this contract, entitled, “Application of DOE Contractor Requirements Documents”.

(c) Except as otherwise directed by the Contracting Officer, the Contractor shall procure all necessary permits or licenses required for the performance of work under this contract.

(d) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the Contractor’s compliance with the requirements.

CLAUSE I.98 - DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS
(a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract, including records series described within the contract as Privacy Act systems of records, shall be the property of the Government and shall be maintained in accordance with 36 Code of Federal Regulations (CFR), Chapter XII, -- Subchapter B, “Records Management.” The contractor shall ensure records classified as Privacy Act system of records are maintained in accordance with FAR 52.224.2 “Privacy Act.”

(b) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause.

(1) Employment-related records (such as worker’s compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except those records described by the contract as being operated and maintained by the Contractor in Privacy Act system of records.

(2) Confidential contractor financial information, internal corporate governance records and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor’s corporate headquarters);

(3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3 are described as the property of the Government; and

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

(5) The following categories of records maintained pursuant to the technology transfer clause of this contract:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

(ii) The contractor’s protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that
contain licensing terms and conditions, or royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

(c) Contract completion or termination. Upon contract completion or termination, the contractor shall ensure final disposition of all Government-owned records to a Federal Record Center, the National Archives and Records Administration, to a successor contractor, its designee, or other destinations, as directed by the Contracting Officer. Upon the request of the Government, the contractor shall provide either the original contractor-owned records or copies of the records identified in paragraph (b) of this clause, to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act) as appropriate. If the contractor chooses to provide its original contractor-owned records to the Government or its designee, the contractor shall retain future rights to access and copy such records as needed.

(d) Inspection, copying, and audit of records. All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Contracting Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(e) Applicability. This clause applies to all records created, received and maintained by the contractor without regard to the date or origination of such records including all records acquired from a predecessor contractor.

(f) Records maintenance and retention. Contractor shall create, maintain, safeguard, and disposition records in accordance with 36 Code of Federal Regulations (CFR), Chapter XII, -- Subchapter B, “Records Management” and the National Archives and Records Administration (NARA)-approved Records Disposition Schedules. Records retention standards are applicable for all classes of records, whether or not the records are owned by the Government or the contractor. The Government may waive application of the NARA-approved Records Disposition Schedules, if, upon termination or completion of the
contract, the Government exercises its right under paragraph (c) of this clause to obtain copies of records described in paragraph (b) and delivery of records described in paragraph (a) of this clause.

(g) Subcontracts.

(1) The contractor shall include the requirements of this clause in all subcontracts that contain the Radiation Protection and Nuclear Criticality clause at 952.223-72, or whenever an on-site subcontract scope of work (i) could result in potential exposure to: A) radioactive materials; B) beryllium; or C) asbestos or (ii) involves a risk associated with chronic or acute exposure to toxic chemicals or substances or other hazardous materials that can cause adverse health impacts, in accordance with 10 CFR part 851. In determining its flow-down responsibilities, the Contractor shall include the requirements of this clause in all on-site subcontracts where the scope of work is performed in: (A) Radiological Areas and/or Radioactive Materials Areas (as defined at 10 CFR 835.2); (B) areas where beryllium concentrations exceed or can reasonably be expected to exceed action levels specified in 10 CFR 850; (C) an Asbestos Regulated area (as defined at 29 CFR 1926.1101 or 29 CFR 1910.1001); or (D) a workplace where hazard prevention and abatement processes are implemented in compliance with 10 CFR 851.21 to specifically control potential exposure to toxic chemicals or substances or other hazardous materials that can cause long term health impacts.

(2) The Contractor may elect to take on the obligations of the provisions of this clause in lieu of the subcontractor, and maintain records that would otherwise be maintained by the subcontractor.

CLAUSE I.99 - DEAR 970.5208-1 PRINTING (DEC 2000) (REVISED 02/06/2009 – M0037)

(a) To the extent that duplicating or printing services may be required in the performance of this contract, the Contractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.

(b) The term “Printing” includes the following processes: composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

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


(a) Work authorization proposal. Prior to the start of each fiscal year, the Contracting Officer or designee shall provide the Contractor with program execution guidance in sufficient detail to enable the Contractor to develop an estimated cost, scope, and schedule. In addition, the Contracting Officer may unilaterally assign work. The Contractor shall submit to the Contracting Officer or other designated official, a detailed description of work, a budget of estimated costs, and a schedule of performance for the work it recommends be undertaken during that upcoming fiscal year.

(b) Cost estimates. The Contractor and the Contracting Officer shall establish a budget of estimated costs, description of work, and schedule of performance for each work assignment. If agreement cannot be reached as to scope, schedule, and estimated cost; the Contracting Officer may issue a unilateral work authorization, pursuant to this clause. The work authorization, whether issued bilaterally or unilaterally shall become part of the contract. No activities shall be authorized or costs incurred prior to Contracting Officer issuance of a work authorization or direction concerning continuation of activities of the contract.

(c) Performance. The Contractor shall perform work as specified in the work authorization, consistent with the terms and conditions of this contract.

(d) Modification. The Contracting Officer may at any time, without notice, issue changes to work authorizations within the overall scope of the contract. A proposal for adjustment in estimated costs and schedule for performance of work, recognizing work made unnecessary as a result, along with new work, shall be submitted by the Contractor in accordance with paragraph (a) of this clause. Resolution shall be in accordance with paragraph (b) of this clause.

(e) Increase in estimated cost. The Contractor shall notify the Contracting Officer immediately whenever the cost incurred, plus the projected cost to complete work is projected to differ (plus or minus) from the estimate by 10 percent. The Contractor shall submit a proposal for modification in accordance with paragraph (a) of this clause. Resolution shall be in accordance with paragraph (b) of this clause.

(f) Expenditure of funds and incurrence of costs. The expenditure of monies by the Contractor in the performance of all authorized work shall be governed by the “Obligation of Funds” or equivalent clause of the contract.
(g) Responsibility to achieve environment, safety, health, and security compliance. Notwithstanding other provisions of the contract, the Contractor may, in the event of an emergency, take that corrective action necessary to sustain operations consistent with applicable environmental, safety, health, and security statutes, regulations, and procedures. If such action is taken, the Contractor shall notify the Contracting Officer within 24 hours of initiation and, within 30 days, submit a proposal for adjustment in estimated costs and schedule established in accordance with paragraphs (a) and (b) of this clause.

CLAUSE I.100 - DEAR 970.5215-1 TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT (DEC 2000) (ALTERNATES II AND IV) (DEC 2000) (REVISED 12/01/2017 – M0798)

(a) Total available fee. Total available fee, consisting of a base fee amount (which may be zero) and a performance fee amount (consisting of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both) determined in accordance with the provisions of this clause, is available for payment in accordance with the clause of this contract entitled, "Payments and advances."

(b) Fee Negotiations. Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon and, if exceeding one year, approved by the Senior Procurement Executive, or designee, the Contracting Officer and Contractor shall enter into negotiation of the requirements for the year or appropriate period, including the evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. The Contracting Officer shall modify this contract at the conclusion of each negotiation to reflect the negotiated requirements, evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. In the event the parties fail to agree on the requirements, the evaluation areas and individual requirements subject to incentives, the total available fee, or the allocation of fee, a unilateral determination will be made by the Contracting Officer. The total available fee amount shall be allocated to a twelve month cycle composed of one or more evaluation periods, or such longer period as may be mutually agreed to between the parties and approved by the Senior Procurement Executive, or designee.

(c) Determination of Total Available Fee Amount Earned.

(1) The Government shall, at the conclusion of each specified evaluation period, evaluate the Contractor’s performance of all requirements, including performance based incentives completed during the period, and determine the total available fee amount earned. At the Contracting Officer’s discretion, evaluation of incentivized performance may occur at the scheduled completion of specific incentivized requirements.
(2) The DOE Operations/Field Office Manager, or designee, will be the Manager, Argonne Site Office. The Contractor agrees that the determination as to the total available fee earned is a unilateral determination made by the Head of Contracting Activity, or designee.

(3) The evaluation of Contractor performance shall be in accordance with the Performance Evaluation and Measurement Plan(s) described in subparagraph (d) of this clause unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the fee determination, and the basis of the fee determination. In the event that the Contractor’s performance is considered to be less than the level of performance set forth in the Statement of Work, as amended to include the current Work Authorization Directive or similar document, for any contract requirement, it will be considered by the DOE Operations/Field Office Manager, or designee, who may at his/her discretion adjust the fee determination to reflect such performance. Any such adjustment shall be in accordance with the clause entitled, "Conditional Payment of Fee, Profit, or Incentives" if contained in the contract.

(4) Award fee not earned during the evaluation period shall not be allocated to future evaluation periods.

(d) Performance Evaluation and Measurement Plan(s). To the extent not set forth elsewhere in the contract:

(1) The Government shall establish a Performance Evaluation and Measurement Plan(s) upon which the determination of the total available fee amount earned shall be based. The Performance Evaluation and Measurement Plan(s) will address all of the requirements of contract performance specified in the contract directly or by reference. A copy of the Performance Evaluation and Measurement Plan(s) shall be provided to the Contractor -

(i) Prior to the start of an evaluation period if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been mutually agreed to by the parties; or

(ii) Not later than thirty days prior to the scheduled start date of the evaluation period, if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been unilaterally established by the Contracting Officer.
(2) The Performance Evaluation and Measurement Plan(s) will set forth the criteria upon which the Contractor will be evaluated relating to any technical, schedule, management, and/or cost objectives selected for evaluation. Such criteria should be objective, but may also include subjective criteria. The Plan(s) shall also set forth the method by which the total available fee amount will be allocated and the amount earned determined.

(3) The Performance Evaluation and Measurement Plan(s) may, consistent with the contract statement of work, be revised during the period of performance. The Contracting Officer shall notify the Contractor -

(i) Of such unilateral changes at least ninety calendar days prior to the end of the affected evaluation period and at least thirty calendar days prior to the effective date of the change;

(ii) Of such bilateral changes at least sixty calendar days prior to the end of the affected evaluation period; or

(iii) If such change, whether unilateral or bilateral, is urgent and high priority, at least thirty calendar days prior to the end of the evaluation period.

(e) Schedule for total available fee amount earned determinations. The DOE Operations/Field Office Manager, or designee, shall issue the final total available fee amount earned determination in accordance with: the schedule set forth in the Performance Evaluation and Measurement Plan(s); or as otherwise set forth in this contract. However, a determination must be made within sixty calendar days after the receipt by the Contracting Officer of the Contractor’s self-assessment, if one is required or permitted by paragraph (f) of this clause, or seventy calendar days after the end of the evaluation period, whichever is later, or a longer period if the Contractor and Contracting Officer agree. If the Contracting Officer evaluates the Contractor’s performance of specific requirements on their completion, the payment of any earned fee amount must be made within seventy calendar days (or such other time period as mutually agreed to between the Contracting Officer and the Contractor) after such completion. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the Federal Register semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period
will be added to the determined amount of fee earned and be subject to interest if not paid in the succeeding 30-day period.

(f) Contractor self-assessment. Following each evaluation period, the Contractor may submit a self-assessment, provided such assessment is submitted within 30 calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The DOE Operations/Field Office Manager, or designee, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the Contractor's management during the period. A self-assessment, in and of itself may not be the only basis for the award fee determination.

CLAUSE I.101 - DEAR 970.5215-3 CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES – FACILITY MANAGEMENT CONTRACTS (AUG 2009) (REvised 02/10/2017 – M0782)

(a) General. (1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon—

(i) The Contractor's or Contractor employees' compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H), which includes worker safety and health (WS&H), including performance under an approved Integrated Safety Management System (ISMS); and

(ii) The Contractor's or Contractor employees' compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information.

(2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including the DOE approved contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.

(3) The performance requirements of this contract relating to the safeguarding of Restricted Data and other classified information are set forth in the clauses of this contract entitled, “Security” and “Laws, Regulations, and DOE Directives,” as well as in other terms and conditions.

(4) If the Contractor does not meet the performance requirements of this contract relating to ES&H or to the safeguarding of Restricted Data and other classified information during any performance evaluation period established under the contract pursuant to the clause of this contract entitled, “Total Available Fee: Base Fee Amount
and Performance Fee Amount,” otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by the contracting officer.

(b) Reduction amount. (1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraphs (c) and (d) of this clause.

(2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26 percent nor greater than 100 percent of the amount of earned fee, fixed fee, profit, or the Contractor's share of cost savings for a first degree performance failure, not less than 11 percent nor greater than 25 percent for a second degree performance failure, and up to 10 percent for a third degree performance failure.

(3) In determining the amount of the reduction and the applicability of mitigating factors, the contracting officer must consider the Contractor's overall performance in meeting the ES&H or security requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range (see 48 CFR 970.1504-1-2). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ES&H only).

(i) Degree of control the Contractor had over the event or incident.

(ii) Efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of: ES&H and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ES&H standards are routinely practiced (e.g., Voluntary Protection Program, ISO 14000).

(vi) Event caused by “Good Samaritan” act by the Contractor (e.g., offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource
allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs). *

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.

(4)(i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a contractor during an evaluation period may be reduced in accordance with this clause if it is determined that a performance failure warranting a reduction under this clause occurs within the evaluation period.

(ii) The amount of reduction under this clause, in combination with any reduction made under any other clause in the contract, shall not exceed the amount of fee, fixed fee, profit, or the Contractor's share of cost savings that is otherwise earned during the evaluation period.

(iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by the Contracting Officer or fee determination official as otherwise payable based on the Contractor's performance during the evaluation period. Where the contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.

(iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practical after becoming aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the Contractor has received for fee, fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned (provisionally or otherwise), the Contractor shall immediately return the excess to the Government. (What the Contractor "has earned" reflects any reduction made under this or any other clause of the contract.)

(v) At the end of the contract—

(A) The Government will pay the Contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned exceeds the sum of the payments the Contractor has received; or
(B) The Contractor shall return to the Government the amount by which the sum of the payments the Contractor has received exceeds the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned. (What the Contractor “has earned” reflects any reduction made under this or any other clause of the contract.)

(c) Environment, Safety and Health (ES&H). Performance failures occur if the Contractor does not comply with the contract's ES&H terms and conditions, including the DOE approved Contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:

1. **First Degree**: Performance failures that are most adverse to ES&H. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the Contractor's ISMS. The following performance failures or performance failures of similar import will be considered first degree:
   
   i. Type A accident (defined in DOE Order 225.1B, or successor version).

   ii. Two Second Degree performance failures during an evaluation period.

2. **Second Degree**: Performance failures that are significantly adverse to ES&H. They include failures to comply with an approved ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. They also include breakdowns of the Safety Management System. The following performance failures or performance failures of similar import will be considered second degree:

   i. Type B accident (defined in DOE Order 225.1B, or successor version).

   ii. Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.

   iii. Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.

3. **Third Degree**: Performance failures that reflect a lack of focus on improving ES&H. They include failures to comply with an approved ISMS that result in potential breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:

   i. Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal) oversight and/or reported per DOE Order 232.1-2 requirements; or internal oversight of DOE Order 440.1A requirements.
(ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant programmatic breakdown.

(iii) Non-compliances that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.

(iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(d) Safeguarding restricted data and other classified information. Performance failures occur if the Contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or share of cost savings will be determined are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

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

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

(End of clause)

CLAUSE I.102 - DEAR 970.5217-1 STRATEGIC PARTNERSHIP PROJECTS PROGRAM (NON-DOE FUNDED WORK) (APR 2015) (REVISED 07/07/2015 – M0735)

(a) Authority to perform Strategic Partnership Projects. Pursuant to the Economy Act of 1932, as amended (31 U.S.C. 1535), and the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.) or other applicable authority, the Contractor may perform work for non-DOE entities (sponsors) on a fully reimbursable basis in accordance with this clause.

(b) Contractor's implementation. The Contractor must draft, implement, and maintain formal policies, practices, and procedures in accordance with this clause, which must be submitted to the Contracting Officer for review and approval.

(c) Conditions of participation in Strategic Partnership Projects program. The Contractor—

1. Must not perform Strategic Partnership Projects activities that would place it in direct competition with the domestic private sector;

2. Must not respond to a request for proposals or any other solicitation from another Federal agency or non-Federal organization that involves direct comparative competition, either as an offeror, team member, or subcontractor to an offeror; however, the Contractor may, following notification to the Contracting Officer, respond to Broad Agency Announcements, Financial Assistance solicitations, and similar solicitations from another Federal Agency or non-Federal organizations when the selection is based on merit or peer review, the work involves basic or applied research to further advance scientific knowledge or understanding, and a response does not result in direct, comparative competition;

3. Must not commence work on any Strategic Partnership Projects activity until a Strategic Partnership Projects proposal package has been approved by the DOE Contracting Officer or designated representative;

4. Must not incur project costs until receipt of DOE notification that a budgetary resource is available for the project, except as provided in 48 CFR 970.5232-6;

5. Must ensure that all costs associated with the performance of the work, including specifically all DOE direct costs and applicable surcharges, are included in any Strategic Partnership Projects proposal;

6. Must maintain records for the accumulation of costs and the billing of such work to ensure that DOE's appropriated funds are not used in support of Strategic Partnership Projects activities and to provide an accounting of the expenditures to DOE and the sponsor upon request;
(7) Must perform all Strategic Partnership Projects in accordance with the standards, policies, and procedures that apply to performance under this contract, including but not limited to environmental, safety and health, security, safeguards and classification procedures, and human and animal research regulations;

(8) May subcontract portion(s) of a Work for Others project; however, the Contractor must select the subcontractor and the work to be subcontracted. Any subcontracted work must be in direct support of the DOE Contractor's performance as defined in the DOE approved Strategic Partnership Projects proposal package; and,

(9) Must maintain a summary listing of project information for each active Strategic Partnership Projects project, consisting of—
   (i) Sponsoring agency;
   (ii) Total estimated costs;
   (iii) Project title and description;
   (iv) Project point of contact; and,
   (v) Estimated start and completion dates.

(d) Negotiation and execution of Strategic Partnership Projects agreement.

(1) When delegated authority by the Contracting Officer, the Contractor may negotiate the terms and conditions that will govern the performance of a specific Strategic Partnership Projects project. Such terms and conditions must be consistent with the terms, conditions, and requirements of the Contractor's contract with DOE. The Contractor may use DOE-approved contract terms and conditions as delineated in DOE Manual 481.1-1A or terms and conditions previously approved by the responsible Contracting Officer or authorized designee for agreements with non-Federal entities. The Contractor must not hold itself out as representing DOE when negotiating the proposed Strategic Partnership Projects agreement.

(2) The Contractor must submit all Strategic Partnership Projects agreements to the DOE Contracting Officer for DOE review and approval. The Contractor may not execute any proposed agreement until it has received notice of DOE approval.

(e) Preparation of project proposals. When the Contractor proposes to perform Strategic Partnership Projects activities pursuant to this clause, it may assist the project sponsor in the preparation of project proposal packages including the preparation of cost estimates.

(f) Strategic Partnership Projects appraisals. DOE may conduct periodic appraisals of the Contractor's compliance with its Strategic Partnership Projects Program policies, practices and procedures. The Contractor must provide facilities and other support in conjunction with such appraisals as directed by the Contracting Officer or authorized designee.

(g) Annual Strategic Partnership Projects report. The Contractor must provide assistance as required by the Contracting Officer or authorized designee in the preparation of a DOE Annual Summary Report of Strategic Partnership Projects activities under the contract.
CLAUSE I.103 - DEAR 970.5222-1 COLLECTIVE BARGAINING AGREEMENTS -- 
MANAGEMENT AND OPERATING CONTRACTS (DEC 2000) (REVISED 02/06/2009 
– M0037)

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

CLAUSE I.104 - DEAR 970.5222-2 OVERTIME MANAGEMENT (DEC 2000) 
(REVISED 02/06/2009 – M0037)

(a) The Contractor shall maintain adequate internal controls to ensure that employee 
overtime is authorized only if cost effective and necessary to ensure performance 
of work under this contract.

(b) The Contractor shall notify the Contracting Officer when in any given year it is 
likely that overtime usage as a percentage of payroll may exceed 4%.

(a) The Contracting Officer may require the submission, for approval, of a formal 
annual overtime control plan whenever Contractor overtime usage as a 
percentage of payroll has exceeded, or is likely to exceed, 4%, or if the 
Contracting Officer otherwise deems overtime expenditures excessive. The plan 
shall include, at a minimum:

(1) An overtime premium fund (maximum dollar amount);

(2) Specific controls for casual overtime for non-exempt employees;

(3) Specific parameters for allowability of exempt overtime;

(4) An evaluation of alternatives to the use of overtime; and

(5) Submission of a semi-annual report that includes for exempt and non-
exempt employees:

(i) Total cost of overtime;
(ii) Total cost of straight time;

(iii) Overtime cost as a percentage of straight-time cost;

(iv) Total overtime hours;

(v) Total straight-time hours; and

(vi) Overtime hours as a percentage of straight-time hours.

CLAUSE I.105 - DEAR 970.5223-1 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000) (REVISED 02/06/2009 – M0037)

(a) For the purposes of this clause,

(1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and

(2) Employees include Subcontractor employees.

(b) In performing work under this contract, the Contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Contractor shall exercise a degree of care commensurate with the work and the associated hazards. The Contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the Contractor’s work planning and execution processes. The Contractor shall, in the performance of work, ensure that:

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Contractor and Subcontractor employees managing or supervising employees performing work.

(2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
(5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

(6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.

(7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the Contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the Contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

(c) The Contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the Contractor will -

(1) Define the scope of work;

(2) Identify and analyze hazards associated with the work;

(3) Develop and implement hazard controls;

(4) Perform work within controls; and

(5) Provide feedback on adequacy of controls and continue to improve safety management.

(d) The System shall describe how the Contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Contractor will measure system effectiveness.

(e) The Contractor shall submit to the Contracting Officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the Contracting Officer. Guidance on the preparation, content, review, and approval of the System will be provided by the Contracting Officer. On an annual basis, the Contractor shall review and update,
for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the Contractor's business processes for work planning, budgeting, authorization, execution, and change control.

(f) The Contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract entitled “Laws, Regulations, and DOE Directives.” The Contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

(g) The Contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Contractor fails to provide resolution or if, at any time, the Contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Contracting Officer may issue an order stopping work in whole or in part. Any stop work order issued by a Contracting Officer under this clause (or issued by the Contractor to a Subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the Contracting Officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Contracting Officer. The Contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(h) Regardless of the performer of the work, the Contractor is responsible for compliance with the ES&H requirements applicable to this contract. The Contractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.

(i) The Contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or -leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the Contractor may choose not to require the Subcontractor to submit a Safety Management System for the Contractor's review and approval.
CLAUSE I.107 - DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010) (REVISED 06/06/2011 – M0387)

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

(b) Remedies. In addition to any other remedies available to the Government, the Contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the Contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.

(c) Subcontracts.

(1) The Contractor agrees to notify the Contracting Officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the Contractor believes may be subject to the requirements of 10 CFR part 707, unless the Contracting Officer agrees to a different date.

(2) The DOE Prime Contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE Prime Contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.

(3) The Contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

CLAUSE I.108 - RESERVED (REVISED 06/06/2011 – M0387)

CLAUSE I.108A - DEAR 970.5223-6 EXECUTIVE ORDER 13423, STRENGTHENING FEDERAL ENVIRONMENTAL, ENERGY AND TRANSPORTATION MANAGEMENT (OCT 2010) (REVISED 06/06/2011 – M0387)

Since this contract involves Contractor operation of Government-owned facilities and/or motor vehicles, the provisions of Executive Order 13423 are applicable to the Contractor to the same extent they would be applicable if the Government were operating the facilities or motor vehicles. Information on the requirements of the Executive Order may be found at http://www.archives.gov/federal-register/executive-orders/.
CLAUSE I.08B - DEAR 970.5223-7 SUSTAINABLE ACQUISITION PROGRAM (OCT 2010) (REVISED 06/06/2011 – M0387)

(a) Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, the Department of Energy (DOE) is committed to managing its facilities in an environmentally preferable and sustainable manner that will promote the natural environment and protect the health and well-being of its Federal employees and contractor service providers. In the performance of work under this contract, the Contractor shall provide its services in a manner that promotes the natural environment, reduces greenhouse gas emissions and protects the health and well-being of Federal employees, contract service providers and visitors using the facility.

(b) Green purchasing or sustainable acquisition has several interacting initiatives. The Contractor must comply with initiatives that are current as of the contract award date. DOE may require compliance with revised initiatives from time to time. The Contractor may request an equitable adjustment to the terms of its contract using the procedures at 48 CFR 970.5243-1 Changes. The initiatives important to these Orders are explained on the following Government or Industry Internet Sites:

1. Recycled Content Products are described at http://epa.gov/cpg
2. Bio-based Products are described at http://www.biopreferred.gov/
4. Energy efficient products are at http://www.femp.energy.gov/procurement for FEMP designated products
5. Environmentally preferable and energy efficient electronics including desktop computers, laptops and monitors are at http://www.epeat.net the Electronic Products Environmental Assessment Tool (EPEAT) the Green Electronics Council site
6. Greenhouse gas emission inventories are required, including Scope 3 emissions which include contractor emissions. These are discussed at Section 13 of Executive Order 13514 which can be found at http://www.archives.gov/federal-register/executive-orders/disposition.html
(8) Water efficient plumbing products are at [http://epa.gov/watersense](http://epa.gov/watersense).

(c) The clauses at FAR 52.223-2, Affirmative Procurement of Bio-based Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming Products, and 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts, require the use of products that have bio-based content, are energy efficient, or have recycled content. To the extent that the services provided by the Contractor require provision of any of the above types of products, the Contractor must provide the energy efficient and environmentally sustainable type of product unless that type of product—

(1) Is not available;

(2) Is not life cycle cost effective (or does not exceed 110% of the price of alternative items if life cycle cost data is unavailable), EPEAT is an example of lifecycle costs that have been analyzed by DOE and found to be acceptable at the silver and gold level;

(3) Does not meet performance needs; or,

(4) Cannot be delivered in time to meet a critical need.


(e) Contractors must establish and maintain a documented energy management program which includes requirements for energy and water efficient equipment, EnergyStar or WaterSense, as applicable and procedures for verification of purchases, following the criteria in DOE Order 430.2B, Departmental Energy, Renewable Energy, and Transportation Management, Attachment 1, or its successor. This requirement should not be flowed down to subcontractors.
(f) In complying with the requirements of paragraph (c) of this clause, the Contractor shall coordinate its activities with and submit required reports through the Environmental Sustainability Coordinator or equivalent position.

(g) The Contractor shall prepare and submit performance reports using prescribed DOE formats, at the end of the Federal fiscal year, on matters related to the acquisition of environmentally preferable and sustainable products and services. This is a material delivery under the contract. Failure to perform this requirement may be considered a failure that endangers performance of this contract and may result in termination for default [see FAR 52.249-6, Termination (Cost Reimbursement)].

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

(i) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "Subcontractor."

CLAUSE I.108C - DEAR 970.5225-1 COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS (NOV 2015) (INCLUDED 04/25/2016 – M0761)

(a) The Contractor shall comply with all applicable U.S. export control laws and regulations.

(b) The Contractor's responsibility to comply with all applicable laws and regulations exists independent of, and is not established or limited by, the information provided by this clause.

(c) Nothing in the terms of this contract adds to, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive Orders, and regulations, including but not limited to—
(1) The Atomic Energy Act of 1954, as amended;

(2) The Arms Export Control Act (22 U.S.C. 2751 et seq.);


(4) Trading with the Enemy Act (50 U.S.C. App. 5(b), as amended by the Foreign Assistance Act of 1961);

(5) Assistance to Foreign Atomic Energy Activities (10 CFR part 810);

(6) Export and Import of Nuclear Equipment and Material (10 CFR part 110);

(7) International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130);

(8) Export Administration Regulations (EAR) (15 CFR parts 730 through 774); and

(9) Regulations administered by the Office of Foreign Assets Control (31 CFR parts 500 through 598).

(d) In addition to the Federal laws and regulations cited above, National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical, and Engineering Information establishes a national policy that, to the maximum extent possible, the products of fundamental research shall remain unrestricted. NSDD 189 provides that no restrictions may be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided in applicable U.S. statutes. As a result, contracts confined to the performance of unclassified fundamental research generally do not involve any export-controlled activities.

NSDD 189 does not take precedence over statutes. NSDD 189 does not exempt any research from statutes that apply to export controls such as the Atomic Energy Act, as amended; the Arms Export Control Act; the Export Administration Act of 1979, as amended; or the U.S. International Emergency Economic Powers Act; or the regulations that implement those statutes (e.g., the ITAR, the EAR, 10 CFR part 110 and 10 CFR part 810). Thus, if items (e.g., commodities, software or technologies) that are controlled by U.S. export control laws or regulations are used to conduct research or are generated as part of the research efforts, the export control laws and regulations apply to the controlled items.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all solicitations and subcontracts.
CLAUSE I.109 - DEAR 970.5226-1 DIVERSITY PLAN (DEC 2000) (REVISED 05/16/2017 – M0786)

The Contractor shall submit a Diversity Plan to the Contracting Officer for approval within 90 days after the effective date of this contract (or contract modification, if appropriate). The Contractor shall submit an update to its Plan annually. By February 1 of each fiscal year, DOE will issue its guidance to the Contractor for the annual Diversity Plan for the fiscal year. The Contractor shall submit its annual Diversity Plan to DOE no later than April 16 of each year. The Plan shall include innovative strategies for increasing opportunities to fully use the talents and capabilities of a diverse work force. The Plan shall address, at a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force, (2) educational outreach, (3) community involvement and outreach, (4) subcontracting, (5) economic development (including technology transfer), and (6) the prevention of profiling based on race or national origin.


(a) Consistent with the objectives of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, 42 U.S.C. 7274h, in instances where the Department of Energy has determined that a change in workforce at a Department of Energy Defense Nuclear Facility is necessary, the Contractor agrees to (1) comply with the Department of Energy Workforce Restructuring Plan for the facility, if applicable, and (2) use its best efforts to accomplish workforce restructuring or displacement so as to mitigate social and economic impacts.

(b) The requirements of this clause shall be included in subcontracts at any tier (except subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed $500,000.

CLAUSE I.111 - DEAR 970.5226-3 COMMUNITY COMMITMENT (DEC 2000) (REVISED 02/06/2009 – M0037)

It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. The basic elements of this policy include: (1) recognizing the diverse interests of the region and its stakeholders, (2) engaging regional stakeholders in issues and concerns of mutual interest, and (3) recognizing that giving back to the community is a worthwhile business practice. Accordingly, the Contractor agrees that its business operations and performance under the Contract will be consistent with the intent of the policy and elements set forth above.

(a) **Definitions.**

(1) **Computer data bases**, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) **Computer software**, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) **Data**, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term “data” does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(4) **Limited rights data**, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (g) of this clause.

(5) **Restricted computer software**, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (h) of this clause.

(6) **Technical data**, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

(7) **Unlimited rights**, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(8) Open Source Software, as used in this clause, means computer software that is distributed under a license under which the user is granted the right to use, copy, modify, prepare derivative works and distribute, in source code or other format, the software, in original or modified form and derivative works thereof, without having to make royalty payments. The Contractor's right to distribute computer software first
produced in the performance of this Contract as Open Source Software is as set forth in paragraph (f).

(b) Allocation of Rights.

(1) Except as may be otherwise expressly provided or directed in writing by the DOE Patent Counsel, the Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, and except for data subject to the withholding provisions for protected Cooperative Research and Development Agreement (CRADA) information in accordance with Technology Transfer actions under this Contract, or other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Strategic Partnership Projects Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (g) of this clause (“Rights in Limited Rights Data”) or paragraph (h) of this clause (“Rights in Restricted Computer Software”); and (v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in provisions of this clause;
(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE’s Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data; and

(iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information which it receives from, or is given access to by DOE or a third party, including a DOE contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyright (General). (1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) of this clause.

(2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d) or (e) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the data prior to its delivery.

(d) Copyrighted works (scientific and technical articles). (1) The Contractor shall have the right to assert, without prior approval of the contracting officer, copyright subsisting in scientific and technical articles composed under this contract or based on or containing data first produced in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, or similar works. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.
(2) The contractor shall mark each scientific or technical article first produced or composed under this Contract and submitted for journal publication or similar means of dissemination with a notice, similar in all material respects to the following, on the front reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright.

Notice: This manuscript has been authored by UChicago-Argonne, LLC under Contract No. DE-AC02-06CH11357 with the U.S. Department of Energy. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, world-wide license to publish or reproduce the published form of this manuscript, or allow others to do so, for United States Government purposes.

(End of notice)

(3) The title to the copyright of the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.

(e) Copyrighted works (other than scientific and technical articles and data produced under a CRADA). The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:

(1) Contractor Request to Assert Copyright.

(i) For data other than scientific and technical articles and data produced under a CRADA, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this Contract pursuant to this clause. The right of the Contractor to copyright data first produced under a CRADA is as described in the individual CRADA. Each request by the Contractor must include:

(A) The identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes, (B) The program under which it was funded, (C) Whether, to the best knowledge of the Contractor, the data is subject to an international treaty or agreement, (D) Whether the data is subject to export control, (E) A statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled, “Technology Transfer Mission,” within five (5) years after obtaining permission to assert copyright or, on a case-by-case basis, a specified longer period where the Contractor can demonstrate that the ability to commercialize effectively is dependent upon such longer period, and (F) For data other than computer
software, a statement explaining why the assertion of copyright is necessary to enhance commercialization and is consistent with DOE's dissemination responsibilities.

(ii) For data that is developed using other funding sources in addition to DOE funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.

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

(2) DOE Review and Response to Contractor's Request. The Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE's permission for the Contractor to assert copyright or advise the Contractor that DOE needs additional time to respond, and the reasons therefor.

(3) Permission for Contractor to Assert Copyright.
(i) For computer software, the Contractor shall furnish to the DOE designated, centralized software distribution and control point, the Energy Science and Technology Software Center, at the time permission to assert copyright is given under paragraph (e)(2) of this clause: (A) An abstract describing the software suitable for publication, (B) the source code for each software program, and (C) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software. The Patent Counsel, for good cause shown by the Contractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. The Contractor acknowledges that the DOE designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

(ii) Unless otherwise directed by the contracting officer, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (e)(2) of this clause above, the Contractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.

(iii) For a five year period or such other specified period as specifically approved by Patent Counsel beginning on the date the Contractor is given permission to assert copyright in data, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or on behalf of the Government. Upon request, the initial period may be extended after DOE approval. The DOE approval will be based on the standard that the work is still commercially available and the market demand is being met.

(iv) After the period approved by Patent Counsel for application of the limited Government license described in paragraph (e)(3)(iii) of this clause, or if, prior to the end of such period(s), the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(v) Whenever the Contractor asserts copyright in data pursuant to this paragraph (e), the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs (e)(3)(iii) and (iv) of this clause. Such action shall be taken when the data are delivered to the Government, published, licensed or deposited for
registration as a published work in the U.S. Copyright Office. The acknowledgment of Government sponsorship and license rights shall be as follows:

Notice: These data were produced by UChicago-Argonne, LLC under Contract No. DE-AC02-06CH11357 with the Department of Energy. For (period approved by DOE Patent Counsel) from (date permission to assert copyright was obtained), the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. There is provision for the possible extension of the term of this license. Subsequent to that period or any extension granted, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor or DOE. Neither the United States nor the United States Department of Energy, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any data, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights.

(End of notice)

(vi) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the five (5) year or specified longer period approved by Patent Counsel as provided for in paragraph (e) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(A) of this clause. Before licensing under this subparagraph (vi), DOE shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the contracting officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65—"Appeals."

(vii) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE Program needs, except as expressly provided in writing by the contracting officer. The Contractor may use its net royalty income to effect such maintenance costs.

(viii) At any time the Contractor abandons commercialization activities for data for which the Contractor has received permission to assert copyright in accordance with this
clause, it shall advise OSTI and Patent Counsel and upon request assign the copyright to the Government so that the Government can distribute the data to the public.

(4) The following notice may be placed on computer software prior to any publication and prior to the Contractor's obtaining permission from the Department of Energy to assert copyright in the computer software pursuant to paragraph (c)(3) of this section.

Notice: This computer software was prepared by UChicago-Argonne, LLC, hereinafter the Contractor, under Contract DE-AC02-06CH11357 with the Department of Energy (DOE). All rights in the computer software are reserved by DOE on behalf of the United States Government and the Contractor as provided in the Contract. You are authorized to use this computer software for Governmental purposes but it is not to be released or distributed to the public. NEITHER THE GOVERNMENT NOR THE CONTRACTOR MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LIABILITY FOR THE USE OF THIS SOFTWARE. This notice including this sentence must appear on any copies of this computer software.

(End of notice)

(5) A similar notice can be used for data, other than computer software, upon approval of DOE Patent Counsel.

(f) OPEN SOURCE SOFTWARE. The Contractor may release computer software first produced by the Contractor in the performance of this Contract under an open source license (hereinafter referred to as “Open Source Software” or “OSS”), subject to the following:

(1) Obtain Program Approval.

(A) The Contractor shall ensure that the DOE Program or Programs that have provided funding to develop the software have approved the distribution of the software as OSS. A DOE Program may provide blanket approval for all software developed with funding from that DOE Program. If approval from a DOE Program is not practicable, DOE Patent Counsel may provide approval. Either the Contractor or CRADA Participant may assert copyright in OSS developed under a CRADA, which precludes marking such OSS as Protected CRADA Information.

(B) If the software is developed with funding from a federal government agency other than DOE, then, authorization from the funding source shall be obtained for OSS release, if practicable. Such federal government agency may provide blanket approval for all software developed with funding from that agency. If approval from such federal government agency is not practicable, DOE Patent Counsel may provide approval.

(2) Assert Copyright in the OSS. Once the Contractor has obtained Program approval in accordance with subparagraph (1) of this section, the Contractor may assert copyright in the software to be distributed as OSS.
(3) Form DOE F 241.4 for OSS to ESTSC. The Contractor must submit the form DOE F 241.4 (or the current form as may be required by DOE) to DOE’s Energy Science and Technology Software Center (ESTSC) at the Office of Scientific and Technical Information (OSTI). The Contractor shall provide the unique URL on the form for ESTSC to distribute.

(4) OSS LOG. The Contractor must maintain a log, available for inspection by DOE, of software distributed as OSS. The log shall contain the following information: (i) name of the computer software (or other identifier), (ii) an abstract with description or purpose of the software, (iii) evidence of DOE Program approval, (iv) the planned or actual OSS location on the Contractor’s webpage or other publicly available location (see subparagraph (5) below); (v) any names, logos or other identifying marks used in connection with the OSS, whether or not registered; (vi) the type of OSS license used; and (vii) release version of the software for OSS containing derivative works. Upon request of Patent Counsel, the Contractor shall periodically provide Patent Counsel a copy of the log.

(5) Provide Public Access to the OSS. The Contractor shall ensure that the OSS is publicly accessible via the Contractor’s website, Open Source Bulletin Boards operated by third parties, ESTSC or other industry standard means.

(6) Select an OSS License. Each OSS will be distributed pursuant to an OSS license. The Contractor may choose an industry standard OSS license or create a Contractor standard license. To assist the Contractor, the DOE Assistant General Counsel for Technology Transfer and Intellectual Property may periodically issue guidance on OSS licenses. The OSS license, must contain, at a minimum, the following provisions:

a) A disclaimer that disclaims the Government’s and Contractor’s liability for licensees’ and third parties’ use of the software;

b) A grant of permission for licensee to distribute OSS containing the licensee’s derivative works subject to trademark restrictions (see subparagraph (9) below). This provision might allow the licensee and third parties to commercialize their derivative works or might request that the licensee’s derivative works be forwarded to the Contractor for incorporation into future OSS versions; and

c) Collection of administrative costs is allowed. However, the Contractor may not collect a royalty or other fee in excess of good faith amount for cost recovery from any licensee for the Contractor’s OSS.

(7) Relationship to Other Required Clauses in the Contract. OSS distributed in accordance with this section shall not be subject to the requirements relating to indemnification of the Contractor or Federal Government, U.S. Competitiveness and U.S. Preference as set forth in paragraphs (g) and (h) of the clause within this contract entitled “Technology Transfer Mission” (DEAR 970.5227-3). The requirement for Contractor to request permission to assert copyright for the purpose of engaging in
licensing software for royalties as set forth elsewhere in this clause is not modified by this section.

(8) Performance of Periodic Export Control Reviews by the Contractor. The Contractor is required to follow its Export Control review procedures before designating any software as OSS. If the Contractor is integrating the original OSS with other copyrightable works created by the Contractor or third parties, the Contractor may need to perform periodic export control reviews.

(9) Determine if Trademark Protection for the OSS is Appropriate. DOE Programs and Contractors have established trademarks on some of their computer software. Therefore, the Contractor should determine whether the OSS is already protected by use of an existing trademark. If the OSS is not so protected, then the DOE Program or the Contractor may want to seek trademark protection. If the OSS is protected by a trademark, the OSS license should state that the derivative works of the licensee or other third party may not be distributed using the proprietary trademark without appropriate prior approval.

(10) Government License. For all OSS, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(11) Availability of Original OSS. The object code and source code of the original OSS developed by the Contractor shall be available to any third party who requests such from the Contractor for so long as such OSS is made publicly available by Contractor. If the Contractor ceases to make the software publicly available, then the Contractor shall submit to ESTSC the object code and source code of the original OSS developed by the Contractor in addition to a revised DOE F 241.4 form (which includes an abstract) and the Contractor shall direct any inquiries from third parties seeking to obtain the original OSS to ESTSC.

(g) Subcontracting. (1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, “Rights in Data-General” at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor’s limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with 48 CFR 927.409(h). The Contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services,
involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.

(2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the contracting officer.

(3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data and restricted computer software for their private use.

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

**Limited Rights Notice**

These data contain “limited rights data,” furnished under Contract No. DE-AC02-06CH11357 with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the “limited rights data” may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;
(b) This “limited rights data” may be disclosed for evaluation purposes under the restriction that the “limited rights data” be retained in confidence and not be further disclosed;

(c) This “limited rights data” may be disclosed to other contractors participating in the Government’s program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the “limited rights data” be retained in confidence and not be further disclosed;

(d) This “limited rights data” may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the “limited rights data” be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

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

(End of notice)

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

Restricted Rights Notice—Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No. DE-AC02-06CH11357. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

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

Restricted Rights Notice—Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. DE-AC02-06CH11357 with UChicago-Argonne, LLC.

(End of notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice “Unpublished-rights reserved under the Copyright Laws of the United States.”
(j) *Relationship to patents.* Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

*(End of clause)*


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

(a) *Authority.* (1) In order to ensure the full use of the results of research and development efforts of, and the capabilities of, the Laboratory, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Laboratory consistent with the policy, principles and purposes of Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a); Section 3132(b) of Pub. L. 101-189, Sections 3134 and 3160 of Pub. L. 103-160, and of Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.); Section 152 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2182); Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); and Executive Order 12591 of April 10, 1987.

(2) In pursuing the technology transfer mission, the Contractor is authorized to conduct activities including but not limited to: identifying and protecting Intellectual Property made, created or acquired at or by the Laboratory; negotiating licensing agreements and assignments for Intellectual Property made, created or acquired at or by the Laboratory that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Strategic Partnership Projects (SPP); providing information exchanges; and making available laboratory or weapon production user facilities. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, SPP, science education activities, consulting, personnel exchanges, assignments, and licensing in accordance with this clause.

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

(2) *Intellectual Property* means patents, trademarks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.
(3) **Cooperative Research and Development Agreement (CRADA)** means any agreement entered into between the Contractor as operator of the Laboratory, and one or more parties including at least one non-Federal party under which the Government, through its laboratory, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Laboratory; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31 of the United States Code.

(4) **Joint Work Statement (JWS)** means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's Laboratory Director or designee which describes the following:

(i) Purpose;

(ii) Scope of Work which delineates the rights and responsibilities of the Government, the Contractor and Third Parties, one of which must be a non-Federal party;

(iii) Schedule for the work; and

(iv) Cost and resource contributions of the parties associated with the work and the schedule.

(5) **Assignment** means any agreement by which the Contractor transfers ownership of Laboratory Intellectual Property, subject to the Government's retained rights.

(6) **Laboratory Biological Materials** means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products, made under this contract by Laboratory employees or through the use of Laboratory research facilities.

(7) **Laboratory Tangible Research Product** means tangible material results of research which

(i) are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility;

(ii) are not materials generally commercially available; and
(iii) were made under this contract by Laboratory employees or through the use of Laboratory research facilities.

(8) **Bailment** means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of Laboratory Biological Materials or Laboratory Tangible Research Product for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.

(c) **Allowable costs.** (1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710). The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this Contract. In addition to any separately designated funds, these costs in any fiscal year shall not exceed an amount equal to 0.5 percent of the operating funds included in the Federal research and development budget (including Strategic Partnership Projects) of the Laboratory for that fiscal year without written approval of the contracting officer.

(2) The Contractor's participation in litigation to enforce or defend Intellectual Property claims incurred in its technology transfer efforts shall be as provided in the clause entitled "Insurance—Litigation and Claims" of this contract.

(d) **Conflicts of Interest—Technology Transfer.** The Contractor shall have implementing procedures that seek to avoid employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the conduct of its technology transfer activities. These procedures shall apply to other persons participating in Laboratory research or related technology transfer activities. Such implementing procedures shall be provided to the contracting officer for review and approval within sixty (60) days after execution of this contract. The contracting officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:

(1) Inform employees of and require conformance with standards of conduct and integrity in connection with the CRADA activity in accordance with the provisions of paragraph (n)(5) of this clause;

(2) Review and approve employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to Contractor-developed Intellectual Property;
(3) Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE projects and programs;

(4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or SPP activities of the Contractor;

(5) Conduct DOE-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts of interest with non-Government funded work;

(6) Notify the contracting officer with respect to any new work to be performed or proposed to be performed under the Contract for DOE or other Federal agencies where the new work or proposal involves Intellectual Property in which the Contractor has obtained or intends to request or elect title;

(7) Except as provided elsewhere in this Contract, obtain the approval of the contracting officer for any licensing of or assignment of title to Intellectual Property rights by the Contractor to any business or corporate affiliate of the Contractor;

(8) Obtain the approval of the contracting officer prior to any assignment, exclusive licensing, or option for exclusive licensing, of Intellectual Property to any individual who has been a Laboratory employee within the previous two years or to the company in which the individual is a principal;

(9) Notify non-Federal sponsors of SPP activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of SPPs or user agreements; and

(10) Notify DOE prior to evaluating a proposal by a third party or DOE, when the subject matter of the proposal involves an elected or waived subject invention under this contract or one in which the Contractor intends to elect to retain title under this contract.

(e) Fairness of Opportunity. In conducting its technology transfer activities, the Contractor shall prepare procedures and take all reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the Laboratory and by entities other than the Contractor.

(f) U.S. Industrial Competitiveness. (1) In the interest of enhancing U.S. Industrial Competitiveness, the Contractor shall, in its licensing and assignments of Intellectual Property, give preference in such a manner as to enhance the accrual of economic and technological benefits to the U.S. domestic economy. The Contractor shall consider the following factors in all of its licensing and assignment decisions involving Laboratory
intellectual property where the Laboratory obtains rights during the course of the Contractor's operation of the Laboratory under this contract:

(i) whether any resulting design and development will be performed in the United States and whether resulting products, embodying parts, including components thereof, will be substantially manufactured in the United States; or

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

(B) in licensing any entity subject to the control of a foreign company or government, whether such foreign government permits United States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements, and has policies to protect United States Intellectual Property rights.

(C) if the proposed licensee, assignee, or parent of either type of entity is subject to the control of a foreign company of government, the Contractor, with the assistance of the Contracting Officer, in considering the factors set forth in paragraph (B) herein, may rely upon the following information; (1) U.S. Trade Representative Inventory of Foreign Trade Barriers, (2) U.S. Trade Representative Special 301 Report, and, (3) such other relevant information available to the Contracting Officer. The Contractor should review the U.S. Trade Representative web site at: http://www.ustr.gov for the most current versions of these reports and other relevant information. The Contractor is encouraged to utilize other available resources, as necessary, to allow for a complete informed decision.

(2) If the Contractor determines that neither of the conditions in paragraphs (f)(1)(i) or (ii) of this clause are likely to be fulfilled, the Contractor, prior to entering into such an agreement, must obtain the approval of the contracting officer. The contracting officer shall act on any such requests for approval within thirty (30) days.

(3) The Contractor agrees to be bound by the provisions of 35 U.S.C. 204 (Preference for United States industry).

(g) Indemnity—Product Liability. In entering into written technology transfer agreements, including but not limited to, research and development agreements, licenses, assignments and CRADAs, the Contractor agrees to include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. The Contractor shall identify and obtain the approval of the contracting officer for any proposed exceptions to this requirement such as where State
or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.

(h) Disposition of Income. (1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the Laboratory, consistent with the research and development mission and objectives of the Laboratory and subject to Section 12(b)(5) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(b)(5)) and Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.) as amended through the effective date of this contract award or modification. If the net amounts of such royalties and income received from patent licensing after payment of patenting costs, licensing costs, payments to inventors and other expenses incidental to the administration of Subject Inventions during any fiscal year exceed 5 percent of the Laboratory's budget for that fiscal year, 75 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be Subject Inventions under the Contract.

(2) The Contractor shall include as a part of its annual Laboratory Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the Laboratory, and at the end of the year, provide a separate accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for an illegal augmentation of funds furnished by the U.S. Government.

(3) The Contractor shall establish subject to the approval of the contracting officer a policy for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the contracting officer.

(i) Transfer to successor contractor. In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the Laboratory shall be transferred, at the contracting officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The Contractor shall transfer title, as one package, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the Laboratory, to the successor contractor or to the Government as directed by the contracting officer.

(j) Technology transfer affecting the national security. (1) The Contractor shall notify and obtain the approval of the contracting officer, prior to entering into any technology transfer arrangement, when such technology or any part of such technology is classified
or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168). Such notification shall include sufficient information to enable DOE to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE's nuclear weapon production complex. DOE shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and DOE shall promptly notify the Contractor as to whether the technology is transferable.

(2) The Contractor shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADAs, licensing agreements and assignments, notice to such third parties that the export of goods and/or Technical Data from the United States may require some form of export control license or other authority from the U.S. Government and that failure to obtain such export control license may result in criminal liability under U.S. laws.

(3) For other than fundamental research as defined in National Security Decision Directive 189, the Contractor is responsible to conduct internal export control reviews and assure that technology is transferred in accordance with applicable law.

(k) Records. The Contractor shall maintain records of its technology transfer activities in a manner and to the extent satisfactory to the DOE and specifically including, but not limited to, the licensing agreements, assignments and the records required to implement the requirements of paragraphs (e), (f), and (h) of this clause and shall provide reports to the contracting officer to enable DOE to maintain the reporting requirements of Section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(6)). Such reports shall be made annually in a format to be agreed upon between the Contractor and DOE and in such a format which will serve to adequately inform DOE of the Contractor's technology transfer activities while protecting any data not subject to disclosure under the Rights in Technical Data clause and paragraph (n) of this clause. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

(l) Reports to Congress. To facilitate DOE's reporting to Congress, the Contractor is required to submit annually to DOE a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan shall be provided to the contracting officer on or before October 1st of each year.

(m) Oversight and appraisal. The Contractor is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this Contract. Laboratory Contractor performance in implementing the technology transfer mission and the effectiveness of
the Contractor's procedures will be evaluated by the contracting officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.

(n) Technology transfer through cooperative research and development agreements. Upon approval of the contracting officer and as provided in a DOE approved Joint Work Statement (JWS), the Laboratory Director, or designee, may enter into CRADAs on behalf of the DOE subject to the requirements set forth in this paragraph.

(1) Review and approval of CRADAs. (i) Except as otherwise directed in writing by the contracting officer, each JWS shall be submitted to the contracting officer for approval. The Contractor's Laboratory Director or designee shall provide a program mission impact statement and shall include an impact statement regarding related Intellectual Property rights known by the Contractor to be owned by the Government to assist the contracting officer in the approval determination.

(ii) The Contractor shall also include (specific to the proposed CRADA), a statement of compliance with the Fairness of Opportunity requirements of paragraph (e) of this clause.

(iii) Within thirty (30) days after submission of a JWS or proposed CRADA, the contracting officer shall approve, disapprove or request modification to the JWS or CRADA. The contracting officer shall provide a written explanation to the Contractor's Laboratory Director or designee of any disapproval or requirement for modification of a JWS or proposed CRADA.

(iv) Except as otherwise directed in writing by the contracting officer, the Contractor shall not enter into, or begin work under, a CRADA until approval of the CRADA has been granted by the contracting officer. The Contractor may submit its proposed CRADA to the contracting officer at the time of submitting its proposed JWS or any time thereafter.

(2) Selection of participants. The Contractor's Laboratory Director or designee in deciding what CRADA to enter into shall:

(i) Give special consideration to small business firms, and consortia involving small business firms;

(ii) Give preference to business units located in the United States which agree that products or processes embodying Intellectual Property will be substantially manufactured or practiced in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements;
(iii) Provide Fairness of Opportunity in accordance with the requirements of paragraph (e) of this clause; and

(iv) Give consideration to the Conflicts of Interest requirements of paragraph (d) of this clause.

(3) Withholding of data. (i) Data that is first produced as a result of research and development activities conducted under a CRADA and that would be a trade secret or commercial or financial data that would be privileged or confidential, if such data had been obtained from a non-Federal third party, may be protected from disclosure under the Freedom of Information Act as provided in the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(7)) for a period as agreed in the CRADA of up to five (5) years from the time the data is first produced. The DOE shall cooperate with the Contractor in protecting such data.

(ii) Unless otherwise expressly approved by the contracting officer in advance for a specific CRADA, the Contractor agrees, at the request of the contracting officer, to transmit such data to other DOE facilities for use by DOE or its Contractors by or on behalf of the Government. When data protected pursuant to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.

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

(4) Strategic Partnership Projects and user facility programs. (i) SPP and User Facility Agreements (UFAs) are not CRADAs and will be available for use by the Contractor in addition to CRADAs for achieving utilization of employee expertise and unique facilities for maximizing technology transfer. The Contractor agrees inform prospective CRADA participants, which are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, i.e., SPP and UFA, and of the Class Patent Waiver provisions associated therewith.

(ii) Where the Contractor believes that the transfer of technology to the U.S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in SPP and UFAs, a request may be made to the contracting officer for an exception to the Class Waivers.

(iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE approval, in such agreements, and the provisions in such agreements take precedence.
over any disposition of rights contained in this Contract. Disposition of rights under any such agreement shall be in accordance with any DOE class waiver (including Strategic Partnership Projects and User Class Waivers) or individually negotiated waiver which applies to the agreement.

(5) **Conflicts of interest.** (i) Except as provided in paragraph (n)(5)(iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA, if, to such employee’s knowledge:

(A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee—

(1) Holds financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;

(2) Receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA; or

(B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.

(ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA certify through the Contractor to the contracting officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.

(iii) The requirements of paragraphs (n)(5)(i) and (n)(5)(ii) of this clause shall not apply in a case where the contracting officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs in the preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the contracting officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the Contractor employee’s participation in the process of preparing, negotiating, or approving the CRADA.

(o) **Technology transfer in other cost-sharing agreements.** In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the contracting officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.
(p) **Technology Partnership Ombudsman.**

(1) The Contractor agrees to establish a position to be known as “Technology Partnership Ombudsman,” to help resolve complaints from outside organizations regarding the policies and actions of the Contractor with respect to technology partnerships (including CRADAs), patents owned by the Contractor for inventions made at the laboratory, and technology licensing.

(2) The Ombudsman shall be a senior official of the Contractor’s laboratory staff, who is not involved in day-to-day technology partnerships, patents or technology licensing, or if appointed from outside the laboratory or facility, shall function as such senior official.

(3) The duties of the Technology Partnership Ombudsman shall include:

   (i) Serving as the focal point for assisting the public and industry in resolving complaints and disputes with the laboratory or facility regarding technology partnerships, patents, and technology licensing;

   (ii) Promoting the use of collaborative alternative dispute resolution techniques such as mediation to facilitate the speedy and low cost resolution of complaints and disputes, when appropriate; and

   (iii) Submitting a quarterly report, in a format provided by DOE, to the Secretary of Energy, the Administrator for Nuclear Security, the Director of the DOE Office of Dispute Resolution, and the Contracting Officer concerning the number and nature of complaints and disputes raised, along with the Ombudsman’s assessment of their resolution, consistent with the protection of confidential and sensitive information.

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**CLAUSE I.114 - DEAR 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002) (REVISED 02/06/2009 – M0037)**

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(b) If the Contractor is sued for copyright infringement or anticipates the filing of such a lawsuit, the Contractor may request authorization and consent to copy a copyrighted work from the Contracting Officer. Programmatic necessity is a major consideration for DOE in determining whether to grant such request.
(c)  

(1) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 52.227-1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts expected to exceed $100,000 at any tier for supplies or services, including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services.

(2) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities expected to exceed $100,000.

(3) Omission of an authorization and consent clause from any subcontract, including those valued less than $100,000 does not affect this authorization and consent.

CLAUSE I.115 - DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2000) (REVISED 02/06/2009 – M0037)

(a) The Contractor shall report to the Contracting Officer promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) If any person files a claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Except where the Contractor has agreed to indemnify the Government, the Contractor shall furnish such evidence and information at the expense of the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontracts at any tier expected to exceed $100,000.

CLAUSE I.116 - DEAR 970.5227-6 PATENT INDEMNITY - SUBCONTRACTS (DEC 2000) (REVISED 02/06/2009 – M0037)

Except as otherwise authorized by the Contracting Officer, the Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the Government) from Contractor’s Subcontractors for any contract work subcontracted in accordance with FAR 48 CFR 52.227-3.
CLAUSE I.117 - DEAR 970.5227-8 REFUND OF ROYALTIES (AUG 2002) (REVISED 02/06/2009 – M0037)

(a) During performance of this Contract, if any royalties are proposed to be charged to the Government as costs under this Contract, the Contractor agrees to submit for approval of the Contracting Officer, prior to the execution of any license, the following information relating to each separate item of royalty:

1. Name and address of licensor;
2. Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
3. Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
4. Percentage or dollar rate of royalty per unit;
5. Unit price of contract item;
6. Number of units;
7. Total dollar amount of royalties; and
8. A copy of the proposed license agreement.

(b) If specifically requested by the Contracting Officer, the Contractor shall furnish a copy of any license agreement entered into prior to the effective date of this clause and an identification of applicable claims of specific patents or other basis upon which royalties are payable.

(c) The term “royalties” as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications that are used in the performance of this contract or any subcontract hereunder.

(d) The Contractor shall furnish to the Contracting Officer, annually upon request, a statement of royalties paid or required to be paid in connection with performing this Contract and subcontracts hereunder.

(e) For royalty payments under licenses entered into after the effective date of this Contract, costs incurred for royalties proposed under this paragraph shall be allowable only to the extent that such royalties are approved by the Contracting Officer. If the Contracting Officer determines that existing or proposed royalty
payments are inappropriate, any payments subsequent to such determination shall be allowable only to the extent approved by the Contracting Officer.

(f) Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to a patent for which Contractor makes a royalty or other payment.

(g) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of any royalties to which this clause applies, the Contractor shall promptly notify the Contracting Officer of that fact and shall promptly reimburse the Government for any refunds received or royalties paid after having received notice of such relief.

(h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds $250.

CLAUSE I.118 - DEAR 970.5227-10 PATENT RIGHTS - MANAGEMENT AND OPERATING CONTRACTS, NONPROFIT ORGANIZATION OR SMALL BUSINESS FIRM CONTRACTOR (DEC 2000) (REVISED 02/06/2009 – M0037)

(a) DEFINITIONS.

(1) **DOE licensing regulations** means the Department of Energy patent licensing regulations at 10 CFR Part 781.

(2) **Exceptional circumstance subject invention** means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii) and in accordance with 37 CFR Part 401.3(e).

(3) **Invention** means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(4) **Made** when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) **Nonprofit organization** means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.
(6) **Patent Counsel** means the Department of Energy (DOE) Patent Counsel assisting the DOE contracting activity.

(7) **Practical application** means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(8) **Small business firm** means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, are used.

(9) **Subject Invention** means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(b) **ALLOCATION OF PRINCIPAL RIGHTS.**

(1) **Retention of title by the Contractor.** Except for exceptional circumstance subject inventions, the Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) **Exceptional circumstance subject inventions.** Except to the extent that rights are retained by the Contractor in a determination of exceptional circumstances or granted to a Contractor through a determination of greater rights in accordance with subparagraph (b)(4) of this clause, the Contractor does not have a right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions.
(i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions:

(A) uranium enrichment technology;

(B) storage and disposal of civilian high-level nuclear waste and spent fuel technology; and

(C) national security technologies classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168).

(ii) Inventions made under any agreement, contract or subcontract related to the following are exceptional circumstance subject inventions:

(A) DOE Steel Initiative and Metals Initiative;

(B) U.S. Advanced Battery Consortium;

(C) Any Funding Agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI); and,

(D) DOE Solid State Lighting Program.

(iii) DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, tasks, or other classifications for the purpose of determining DOE exceptional circumstance subject inventions.

(3) **Treaties and international agreements.** Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements identified at Appendix J to this contract. DOE reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and to effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

(4) **Contractor request for greater rights in exceptional circumstance subject inventions.** The Contractor may request rights greater than allowed by the exceptional circumstance determination in an exceptional circumstance subject invention by submitting such a request in writing to Patent Counsel.
at the time the exceptional circumstance subject invention is disclosed to DOE or within eight (8) months after conception or first actual reduction to practice of the exceptional circumstance subject invention, whichever occurs first, unless a longer period is authorized in writing by the Patent Counsel for good cause shown in writing by the Contractor. DOE may, in its discretion, grant or refuse to grant such a request by the Contractor.

(5) **Contractor employee-inventor rights.** If the Contractor does not elect to retain title to a subject invention or does not request greater rights in an exceptional circumstance subject invention, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE, and DOE may, in its discretion, grant or refuse to grant such a request by the Contractor employee-inventor.

(6) **Government assignment of rights in Government employees’ subject inventions.** If a Government employee is a joint inventor of a subject invention or of an exceptional circumstance subject invention to which the Contractor has rights, the Government may assign or refuse to assign to the Contractor any rights in the subject invention or exceptional circumstance subject invention acquired by the Government from the Government employee, in accordance with 48 CFR 27.304-1(d). The rights assigned to the Contractor are subject to any provision of this clause that is applicable to subject inventions in which the Contractor retains title, including reservation by the Government of a nonexclusive, nontransferable, irrevocable, paid-up license, except that the Contractor shall file its initial patent application claiming the subject invention or exceptional circumstance invention within one (1) year after the assignment of such rights. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the Government employee.

(c) **SUBJECT INVENTION DISCLOSURE, ELECTION OF TITLE AND FILING OF PATENT APPLICATION BY CONTRACTOR.**

(1) **Subject invention disclosure.** The Contractor will disclose each subject invention to the Patent Counsel within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s) and all sources of funding by B&R code for the invention. It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or
electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. The disclosure shall include a written statement as to whether the invention falls within an exceptional circumstance field. DOE will make a determination and advise the Contractor within 30 days of receipt of an invention disclosure as to whether the invention is an exceptional circumstance subject invention. In addition, after disclosure to the Patent Counsel, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning any nonelectable subject invention such as an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.

(2) **Election by the Contractor.** Except as provided in paragraph (b)(2) of this clause, the Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) **Filing of patent applications by the Contractor.** The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, or prior to the end of any 1-year statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) **Contractor’s request for an extension of time.** Requests for an extension of the time for disclosure, election, and filing under subparagraphs (c)(1), (2) and (3) may, at the discretion of Patent Counsel, be granted.

(5) **Publication Approval.** During the course of the work under this contract, the Contractor or its employees may desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the
(d) **CONDITIONS WHEN THE GOVERNMENT MAY OBTAIN TITLE.**

The Contractor will convey to the DOE, upon written request, title to any subject invention --

1. If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within sixty (60) days after learning of the failure of the Contractor to disclose or to elect within the specified times.

2. In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in subparagraph (c) above, but prior to its receipt of the written request of the DOE, the Contractor shall continue to retain title in that country.

3. In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

4. If the Contractor requests that DOE acquire title or rights from the Contractor in a subject invention to which the Contractor had initially retained title or rights, or in an exceptional circumstance subject invention to which the Contractor was granted greater rights, DOE may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE’s sole discretion.

(e) **MINIMUM RIGHTS OF THE CONTRACTOR AND PROTECTION OF THE CONTRACTOR’S RIGHT TO FILE.**

1. *Request for a Contractor license.* The Contractor may request the right to reserve a revocable, nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title,
except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. DOE may grant or refuse to grant such a request by the Contractor. When DOE approves such reservation, the Contractor’s license will normally extend to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Contractor’s business to which the invention pertains.

(2) Revocation or modification of a Contractor license. The Contractor’s domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and DOE licensing regulations at 10 CFR Part 781. This license will not be revoked in the field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the subject invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application of the subject invention in that foreign country.

(3) Notice of revocation of modification of a Contractor license. Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations at 10 CFR part 781 concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) CONTRACTOR ACTION TO PROTECT THE GOVERNMENT’S INTEREST.

(1) Execution of delivery of title or license instruments. The Contractor agrees to execute or to have executed, and promptly deliver to the Patent Counsel all instruments necessary to accomplish the following actions:

(i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and
(ii) convey title to DOE when requested under subparagraphs (b) or paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) **Contractor employee agreements.** The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government’s rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) **Notification of discontinuation of patent protection.** The Contractor will notify the Patent Counsel of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) **Notification of Government rights.** The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, “This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention.”

(5) **Invention Identification Procedures.** The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed and shall submit a written description of such procedures to the Contracting Officer so that the Contracting Officer may evaluate and determine their effectiveness.

(6) **Invention Filing Documentation.** If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel, upon request, the following information and documents:
(i) the filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);

(ii) an executed and approved instrument fully confirmatory of all Government rights in the subject invention; and

(iii) the patent number, issue date, and a copy of any issued patent claiming the subject invention.

(7) Duplication and disclosure of documents. The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to the confidentiality provision at 35 U.S.C. 205 and 37 CFR Part 40.

(g) SUBCONTRACTS.

(1) Subcontractor subject inventions. The Contractor shall not obtain rights in the Subcontractor's subject inventions as part of the consideration for awarding a subcontract.

(2) Inclusion of patent rights clause - non-profit organization or small business firm Subcontractors. Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph (b)(2) of this clause. The Subcontractor retains all rights provided for the Contractor in the patent rights clause at 48 CFR 952.227-11.

(3) Inclusion of patent rights clause - Subcontractors other than non-profit organizations and small business firms. Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227-13, suitably modified to identify the parties, in any contract for experimental, developmental, demonstration or research work. For subcontracts subject to exceptional circumstances, the Contractor must consult with DOE patent counsel with respect to the appropriate patent clause.

(4) DOE and Subcontractor contract. With respect to subcontracts at any tier, DOE, the Subcontractor, and the Contractor agree that the mutual
obligations of the parties created by this clause constitute a contract between the Subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(5) **Subcontractor refusal to accept terms of patent clause.** If a prospective Subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the Subcontractor’s reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.

(6) **Notification of award of subcontract.** Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the Subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.

(7) **Identification of Subcontractor subject inventions.** If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention.

(h) **REPORTING ON UTILIZATION OF SUBJECT INVENTIONS.**

The Contractor agrees to submit to DOE on request, periodic reports, no more frequently than annually, on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) **PREFERENCE FOR UNITED STATES INDUSTRY.**

Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that
any product embodying the subject invention or produced through the use of the
subject invention will be manufactured substantially in the United States.
However, in individual cases, the requirement for such an agreement may be
waived by DOE upon a showing by the Contractor or its assignee that
reasonable but unsuccessful efforts have been made to grant licenses on similar
terms to potential licensees that would be likely to manufacture substantially in
the United States or that under the circumstances domestic manufacture is not
commercially feasible.

(j) MARCH-IN RIGHTS.

The Contractor agrees that, with respect to any subject invention in which it has
acquired title, DOE has the right in accordance with the procedures in 37 CFR
401.6 and any DOE supplemental regulations to require the Contractor, an
assignee or exclusive licensee of a subject invention to grant a nonexclusive,
partially exclusive, or exclusive license in any field of use to a responsible
applicant or applicants, upon terms that are reasonable under the circumstances,
and, if the Contractor, assignee or exclusive licensee refuses such a request,
DOE has the right to grant such a license itself if DOE determines that --

(1) Such action is necessary because the Contractor or assignee has not
taken, or is not expected to take within a reasonable time, effective steps
to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not
reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by
Federal regulations and such requirements are not reasonably satisfied by
the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph
(i) of this clause has not been obtained or waived, or because a licensee
of the exclusive right to use or sell any subject invention in the United
States is in breach of such agreement.

(k) SPECIAL PROVISIONS FOR CONTRACTS WITH NONPROFIT
ORGANIZATIONS.

If the Contractor is a nonprofit organization, it agrees that --

(1) DOE approval of assignment of rights. Rights to a subject invention in the
United States may not be assigned by the Contractor without the approval
of DOE, except where such assignment is made to an organization which
has as one of its primary functions the management of inventions;
provided, that such assignee will be subject to the same provisions of this clause as the Contractor.

(2) **Small business firm licensees.** It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business firm applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(2).

(3) **Contractor licensing of subject inventions.** To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.

(l) **COMMUNICATIONS.**

The Contractor shall direct any notification, disclosure or request provided for in this clause to the Patent Counsel assisting the DOE contracting activity.

(m) **REPORTS.**

(1) **Interim reports.** Upon DOE’s request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period.

(2) **Final reports.** Upon DOE’s request, the Contractor shall submit to DOE, prior to closeout of the contract, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no
such subcontracts were awarded during the contract performance period.

(n) EXAMINATION OF RECORDS RELATING TO SUBJECT INVENTIONS.

(1) Contractor compliance. Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor compliance with any requirement of this clause.

(2) Unreported inventions. If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, including exceptional circumstance subject inventions, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

(3) Confidentiality. Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(4) Power of inspection. With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(o) FACILITIES LICENSE.

In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or product manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.
(p) **ATOMIC ENERGY.**

(1) *Pecuniary awards.* No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) *Patent agreements.* Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (p)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(q) **CLASSIFIED INVENTIONS.**

(1) *Approval for filing a foreign patent application.* The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.

(2) *Transmission of classified subject matter.* If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

(3) Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(r) **PATENT FUNCTIONS.**

Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(s) **EDUCATIONAL AWARDS SUBJECT TO 35 U.S.C. 212.**
The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) which is subject to treaties or international agreements as set forth in paragraph (b)(3) of this clause or agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

(t) ANNUAL APPRAISAL BY PATENT COUNSEL.

Patent Counsel may conduct an annual appraisal to evaluate the Contractor’s effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

CLAUSE I.119 - RESERVED (REVISED 09/28/2009 – M0078)

CLAUSE I.120 - DEAR 970.5228-1 INSURANCE–LITIGATION AND CLAIMS (JUL 2013) (REVISED 06/23/2013 – M0643)

(a) The contractor must comply with 10 CFR part 719, Contractor Legal Management Requirements, if applicable.

(b) (1) Except as provided in paragraph (b)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the Contracting Officer

(2) The contractor may, with the approval of the Contracting Officer, maintain a self-insurance program in accordance with FAR 28.308; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with sureties and insurers approved by the Contracting Officer.

(c) The contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the Contracting Officer.
(d) Except as provided in paragraph (f) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed--

(1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance without regard to the clause of this contract entitled “Obligation of Funds.”

(e) The Government's liability under paragraph (d) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(f) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities to third parties, including contractor employees, and directly associated costs which may include but are not limited to litigation costs, counsel fees, judgments and settlements—

(i) Which are otherwise unallowable by law or the provisions of this contract, including the cost reimbursement limitations contained in 48 CFR part 31, as supplemented by 48 CFR 970.31;

(ii) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the Contracting Officer; or

(iii) Which were caused by contractor managerial personnel's—

(A) Willful misconduct;

(B) Lack of good faith; or

(C) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

(2) The term “contractor’s managerial personnel” is defined in the Property clause in this contract.
(g) (1) All litigation costs, including counsel fees, judgments and settlements shall be segregated and accounted for by the contractor separately. If the Contracting Officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.

(2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the Contracting Officer.

(3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (f) of this clause is not allowable.

(h) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or non-reimbursable costs incurred in connection with contract performance.

CLAUSE I.121 - DEAR 970.5229-1 STATE AND LOCAL TAXES (DEC 2000)
(REVISED 02/06/2009 – M0037)

(a) The Contractor agrees to notify the Contracting Officer of any State or local tax, fee, or charge levied or purported to be levied on or collected from the Contractor with respect to the contract work, any transaction there under, or property in the custody or control of the Contractor and constituting an allowable item of cost if due and payable, but which the Contractor has reason to believe, or the Contracting Officer has advised the Contractor, is or may be inapplicable or invalid; and the Contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the Contracting Officer. Any State or local tax, fee, or charge paid with the approval of the Contracting Officer or on the basis of advice from the Contracting Officer that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

(b) The Contractor agrees to take such action as may be required or approved by the Contracting Officer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the Contracting Officer to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the Contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the Contractor. If the Contracting Officer directs the Contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or
suit is filed against the Contractor for a tax, fee, or charge it has refrained from paying in accordance with this clause, the procedures and requirements of the clause entitled “Insurance-Litigation and Claims” shall apply and the costs and expenses incurred by the Contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the Contractor.

(c) The Government shall hold the Contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.


(a) The Department of Energy agrees to reimburse the Contractor, and the Contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the Contractor arising out of any condition, act, or failure to act which occurred before the Contractor assumed responsibility on October 1, 2006. To the extent the acts or omissions of the Contractor cause or add to any liability, expense or remediation cost resulting from conditions in existence prior to October 1, 2006, the Contractor shall be responsible in accordance with the terms and conditions of this contract.

(b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.

(c) The Contractor has the duty to inspect the facilities and sites and timely identify to the Contracting Officer those conditions which it believes could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suit, cost, expense, or disbursement or areas of actual or potential noncompliance with the terms and conditions of this contract or applicable law or regulation. The Contractor has the responsibility to take corrective action, as directed by the Contracting Officer and as required elsewhere in this contract.

CLAUSE I.123 - DEAR 970.5232-1 REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS (DEC 2000) (REVISED 02/06/2009 – M0037)

(a) The Contracting Officer may reduce or suspend further advance, partial, or progress payments to the Contractor upon a written determination by the Senior Procurement Executive that substantial evidence exists that the Contractor’s request for advance, partial, or progress payment is based on fraud.

(b) The Contractor shall be afforded a reasonable opportunity to respond in writing.
CLAUSE I.124 - DEAR 970.5232-2 PAYMENTS AND ADVANCES (DEC 2000)
(ALTERNATES II AND III) (DEC 2000) (REVISED 02/06/2009 – M0037)

(a) Payment of Total available fee: Base Fee and Performance Fee. The base fee amount, if any, is payable in equal monthly installments. Total available fee amount earned is payable following the Government's Determination of Total Available Fee Amount Earned in accordance with the clause of this contract entitled "Total Available Fee: Base Fee Amount and Performance Fee Amount." Base fee amount and total available fee amount earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the Contractor, including any amounts owed for disallowed costs under this contract. No base fee amount or total available fee amount earned payment may be withdrawn against the payments cleared financing arrangement without the prior written approval of the Contracting Officer.

(b) Payments on Account of Allowable Costs. The Contracting Officer and the Contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the Contracting Officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefore shall be excluded from costs for payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accrual therefore may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.

(c) Special financial institution account--use. All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the Contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix C. No part of the funds in the special financial institution account shall be commingled with any funds of the Contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer determines that the balance of such special financial institution account exceeds the Contractor's current needs, the Contractor shall promptly make such disposition of the excess as the Contracting Officer may direct.
(d) **Title to funds advanced.** Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the Contractor hereunder is not a loan to the Contractor, and will not require the payment of interest by the Contractor, and that the Contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

(e) **Financial settlement.** The Government shall promptly pay to the Contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the Contracting Officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after -

1. Compliance by the Contractor with DOE's patent clearance requirements; and

2. The furnishing by the Contractor of -

   (i) An assignment of the Contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the Contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;

   (ii) A closing financial statement;

   (iii) The accounting for Government-owned property required by the clause entitled "Property"; and

   (iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions -

      (A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Contractor;

      (B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1)
year after the Contractor’s right of action first accrues. In addition, the Contractor shall provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause I.120, 48 CFR 970.5228-1, "Insurance--Litigation and Claims");

(C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and

(D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.

(3) In arriving at the amount due the Contractor under this clause, there shall be deducted -

(i) Any claim which the Government may have against the Contractor in connection with this contract; and

(ii) Deductions due under the terms of this contract and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.

(f) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.

(g) Discounts. The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government.

(h) Collections. All collections accruing to the Contractor in connection with the work under this contract, except for the Contractor’s fee and royalties or other income accruing to the Contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the Contracting Officer.
(i) **Direct payment of charges.** The Government reserves the right, upon ten days written notice from the Contracting Officer to the Contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the Contractor therefore.

(j) **Determining allowable costs.** The Contracting Officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the Department of Energy Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.

(k) **Review and approval of costs incurred.** The Contractor shall prepare and submit annually as of September 30, a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the Cost Statement. The Contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended. DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the Contractor in accordance with DOE accounting policies, but will not relieve the Contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

**CLAUSE I.125 - DEAR 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION (DEC 2010 (REVISED 06/06/2011 – M0387))**

(a) **Accounts.** The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the Contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

(a) **Inspection and audit of accounts and records.** All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause, Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the Contractor shall afford DOE proper facilities for such inspection and audit.
(c) Audit of subcontractors' records. The Contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the Contracting Officer.

(d) Disposition of records. Except as agreed upon by the Government and the Contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the Contracting Officer as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause 970.5204-3, Access to and Ownership of Records, all other records in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.

(e) Reports. The Contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.

(f) Inspections. The DOE shall have the right to inspect the work and activities of the Contractor under this contract at such time and in such manner as it shall deem appropriate.

(g) Subcontracts. The Contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

(h) Comptroller General.

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

(3) Nothing in this contract shall be deemed to preclude an audit by the Government Accountability Office of any transaction under this contract.

(i) Internal audit. The Contractor agrees to design and maintain an internal audit plan and an internal audit organization.

(1) Upon contract award, the exercise of any contract option, or the extension of the contract, the Contractor must submit to the Contracting Officer for approval an Internal Audit Implementation Design to include the overall strategy for internal audits. The Audit Implementation Design must describe—

(i) The internal audit organization's placement within the contractor's organization and its reporting requirements;

(ii) The audit organization's size and the experience and educational standards of its staff;

(iii) The audit organization's relationship to the corporate entities of the Contractor;

(iv) The standards to be used in conducting the internal audits;

(v) The overall internal audit strategy of this contract, considering particularly the method of auditing costs incurred in the performance of the contract;

(vi) The intended use of external audit resources;

(vii) The plan for audit of subcontracts, both pre-award and post-award; and

(viii) The schedule for peer review of internal audits by other contractor internal audit organizations, or other independent third party audit entities approved by the DOE Contracting Officer.

(2) By each January 31 of the contract performance period, the Contractor must submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year. That report shall reflect the results of the internal audits during the previous fiscal year and
the actions to be taken to resolve weaknesses identified in the contractor's system of business, financial, or management controls.

(3) By each June 30 of the contract performance period, the Contractor must submit to the Contracting Officer an annual audit plan for the activities to be undertaken by the internal audit organization during the next fiscal year that is designed to test the costs incurred and contractor management systems described in the internal audit design.

(4) The Contracting Officer may require revisions to documents submitted under paragraphs (i)(1), (i)(2), and (i)(3) of this clause, including the design plan for the internal audits, the annual report, and the annual internal audits.

(j) Remedies. If at any time during contract performance, the Contracting Officer determines that unallowable costs were claimed by the Contractor to the extent of making the contractor's management controls suspect, or the contractor's management systems that validate costs incurred and claimed suspect, the Contracting Officer may, in his or her sole discretion, require the Contractor to cease using the special financial institution account in whole or with regard to specified accounts, requiring reimbursable costs to be claimed by periodic vouchering. In addition, the Contracting Officer, where he or she deems it appropriate, may: Impose a penalty under 48 CFR 970.5242-1, Penalties for Unallowable Costs; require a refund; reduce the contractor's otherwise earned fee; and take such other action as authorized in law, regulation, or this contract.

CLAUSE I.126 - DEAR 970.5232-4 OBLIGATION OF FUNDS (DEC 2000) (REVISED 12/01/2017 – M0798)

(a) Obligation of funds. The amount presently obligated by the Government with respect to this contract is $8,279,422,947.79. Such amount may be increased unilaterally by DOE by written notice to the Contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the Contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract. Nothing in this paragraph is to be construed as authorizing the Contractor to exceed limitations stated in financial plans established by DOE and furnished to the Contractor from time to time under this contract.

(b) Limitation on payment by the Government. Except as otherwise provided in this contract and except for costs which may be incurred by the Contractor pursuant to the Termination clause of this contract or costs of claims allowable under the
contract occurring after completion or termination and not released by the Contractor at the time of financial settlement of the contract in accordance with the clause entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the Contractor’s fee and any negotiated fixed amount. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of:

(1) Collections accruing to the Contractor in connection with the work under this contract and processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract, and

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

(c) Notices—Contractor excused from further performance. The Contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), plus the Contractor’s best estimate of collections to be received and available during the 45 day period hereinafter specified, is in the Contractor’s best judgment sufficient to continue contract operations at the programmed rate for only 45 days and to cover the Contractor’s unpaid fee and any negotiated fixed amounts, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), less the amount of the Contractor’s fee then earned but not paid and any negotiated fixed amounts, is in the Contractor’s best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the Contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the Contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the Termination clause of this contract.

(d) Financial plans; cost and encumbrance limitations. In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the Contractor, establish controls on the costs to be incurred and encumbrances to be made in
the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The Contractor agrees

(1) to comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives,

(2) to comply with other requirements of such plans and directives, and

(3) to notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.

(e) Government's right to terminate not affected. The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the Termination clause of this contract.

CLAUSE I.127 - DEAR 970.5232-5 LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (DEC 2000) (REVISED 02/06/2009 – M0037)

(a) The Contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the clauses of this contract entitled, “Cost Accounting Standards,” and “Administration of Cost Accounting Standards,” if its failure to comply with the clauses is caused by the Contractor's compliance with published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Senior Procurement Executive.

(b) The Contractor is not liable to the Government for increased costs or interest resulting from its Subcontractors' failure to comply with the clauses at FAR 52.230-2, “Cost Accounting Standards,” and FAR 52.230-6, “Administration of Cost Accounting Standards,” if the Contractor includes in each covered subcontract a clause making the Subcontractor liable to the Government for increased costs or interest resulting from the Subcontractor's failure to comply with the clauses; and the Contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the Subcontractor.

CLAUSE I.128 - DEAR 970.5232-6 STRATEGIC PARTNERSHIP PROJECT FUNDING AUTHORIZATION (APR 2015) (REVISED 07/07/2015 – M0735)

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

**CLAUSE I.129 - DEAR 970.5232-7 FINANCIAL MANAGEMENT SYSTEM (DEC 2000) (REVISED 02/06/2009 – M0037)**

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

**CLAUSE I.130 - DEAR 970.5232-8 INTEGRATED ACCOUNTING (DEC 2000) (REVISED 02/06/2009 – M0037)**

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

**CLAUSE I.131 - DEAR 970.5235-1 FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER SPONSORING AGREEMENT (DEC 2010) (REVISED 04/25/2016 – M0761)**

(a) Pursuant to 48 CFR 35.017-1, this contract constitutes the sponsoring agreement between the Department of Energy (DOE) and the Contractor, which establishes the relationship for the operation of a Department of Energy sponsored Federally Funded Research and Development Center (FFRDC).
(b) In the operation of this FFRDC, the Contractor may be provided access beyond that which is common to the normal contractual relationship, to Government and supplier data, including sensitive and proprietary data, and to Government employees and facilities needed to discharge its responsibilities efficiently and effectively. Because of this special relationship, it is essential that the FFRDC be operated in the public interest with objectivity and independence, be free from organizational conflicts of interest, and have full disclosure of its affairs to the Department of Energy.

(c) Unless otherwise provided by the contract, the Contractor may accept work from a nonsponsor (as defined in 48 CFR 35.017) in accordance with the requirements and limitations of the clause 48 CFR 970.5217-1, Strategic Partnership Projects Program.

(d) As an FFRDC, the Contractor shall not use its privileged information or access to government facilities to compete with the private sector. Specific guidance on restricted activities is contained in DOE Order 481.1C, Strategic Partnership Projects (Formerly Known as Work for Others (Non-Department of Energy Funded Work)), or successor version.

(End of clause)

CLAUSE I.132 - DEAR 970.5236-1 GOVERNMENT FACILITY SUBCONTRACT APPROVAL (DEC 2000) (DEVIATION) (REVISED 02/06/2009 – M0037)

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


(a) Contractors which include unallowable cost in a submission for settlement for cost incurred, may be subject to penalties.

(b) If, during the review of a submission for settlement of cost incurred, the Contracting Officer determines that the submission contains an expressly unallowable cost or a cost determined to be unallowable prior to the submission, the Contracting Officer shall assess a penalty.

(c) Unallowable costs are either expressly unallowable or determined unallowable.
(1) An expressly unallowable cost is a particular item or type of cost which, under the express provisions of an applicable law, regulation, or this contract, is specifically named and stated to be unallowable.

(2) A cost determined unallowable is one which, for that Contractor—

(i) Was subject to a Contracting Officer’s final decision and not appealed;

(ii) The Civilian Board of Contract Appeals or a court has previously ruled as unallowable; or

(iii) Was mutually agreed to be unallowable.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its submission for settlement of cost incurred is—

(1) Expressly unallowable, then the Contracting Officer shall assess a penalty in an amount equal to the disallowed cost allocated to this contract plus interest on the paid portion of the disallowed cost. Interest shall be computed from the date of overpayment to the date of repayment using the interest rate specified by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97); or

(2) Determined unallowable, then the Contracting Officer shall assess a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(e) The Contracting Officer may waive the penalty provisions when—

(1) The Contractor withdraws the submission before the formal initiation of an audit of the submission and submits a revised submission;

(2) The amount of the unallowable costs allocated to covered contracts is $10,000 or less; or

(3) The Contractor demonstrates to the Contracting Officer’s satisfaction that—

(i) It has established appropriate policies, personnel training, and an internal control and review system that provides assurances that unallowable costs subject to penalties are precluded from the Contractor’s submission for settlement of costs; and

(ii) The unallowable costs subject to the penalty were inadvertently incorporated into the submission.
CLAUSE I.134 - DEAR 970.5243-1 CHANGES (DEC 2000) (REVISED 02/06/2009 – M0037)

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

(b) Work to continue. Nothing contained in this clause shall excuse the Contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.


(a) General. The Contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause and 48 CFR subpart 970.44. The Contractor’s purchasing system and methods shall be fully documented, consistently applied, and acceptable to the Department of Energy (DOE) in accordance with 48 CFR 970.4401-1. The Contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The Contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the Contractor submit for approval any or all purchases under this contract. The Contractor shall not purchase any item or service, the purchase of which is expressly prohibited by the written direction of DOE, and shall use such special and directed sources as may be expressly required by the DOE Contracting Officer. DOE will conduct periodic appraisals of the Contractor's management of all facets of the purchasing function, including the Contractor's compliance with its approved system and methods. Such appraisals will be performed through the conduct of Contractor Purchasing System Reviews in accordance with 48 CFR subpart 44.3, or, when approved by the Contracting Officer, through the Contractor's participation in the conduct of the Balanced Scorecard performance
measurement and performance management system. The Contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (y) of this clause.

(b) **Acquisition of utility services.** Utility services shall be acquired in accordance with the requirements of subpart 970.41.

(c) **Acquisition of Real Property.** Real property shall be acquired in accordance with 48 CFR subpart 917.74.

(d) **Advance Notice of Proposed Subcontract Awards.** Advance notice shall be provided in accordance with 48 CFR 970.4401-3.

(e) **Audit of Subcontractors.**

1. The Contractor shall provide for—
   
   (i) Periodic post-award audit of cost-reimbursement subcontractors at all tiers; and
   
   (ii) Audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.

2. Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The Contractor shall provide, in appropriate cases, for the timely involvement of the Contractor and the DOE Contracting Officer in resolution of subcontract cost allowability.

3. Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE Contracting Officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the Contractor.

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

(f) **Bonds and Insurance.**
(1) The Contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102-2(a) for all fixed-priced and unit-priced construction subcontracts in excess of $150,000. The Contractor shall consider the use of performance bonds in fixed-price non-construction subcontracts, where appropriate.

(2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of $150,000, a payment bond shall be obtained on Standard Form 25A modified to name the Contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).

(3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts greater than $25,000, but not greater than $100,000, the Contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

(4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.

(g) Buy American. The Contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225-1 and 48 CFR 52.225-9. The Contractor shall forward determinations of non-availability of individual items to the DOE Contracting Officer for approval. Items in excess of $500,000 require the prior concurrence of the Head of Contracting Activity. If, however, the Contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the Contractor to make determinations of non-availability for individual items valued at $500,000 or less.

(h) Construction and Architect-Engineer Subcontracts.

(1) Independent Estimates. A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.

(2) Specifications. Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."

(3) Prevention of Conflict of Interest.
(i) The Contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.

(ii) The Contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.

(iii) The Contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

(i) Contractor-Affiliated Sources. Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402-3.

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

(k) Government Property. The Contractor shall establish and maintain a property management system that complies with criteria in 48 CFR 970.5245-1, Property, and 48 CFR 52.245-1, Government Property.

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

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

(n) [Reserved]

(o) Management, Acquisition and Use of Information Resources. Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.
(p) **Priorities, Allocations and Allotments.** Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.

(q) **Purchase of Special Items.** Purchase of the following items shall be in accordance with the following provisions of 48 CFR subpart 8.5, 48 CFR subpart 908.71, Federal Management Regulation 41 CFR part 102, and the Federal Property Management Regulation 41 CFR chapter 101:

1. Motor vehicles—48 CFR 908.7101
2. Aircraft—48 CFR 908.7102
4. Alcohol—48 CFR 908.7107
5. Helium—48 CFR subpart 8.5
6. Fuels and packaged petroleum products—48 CFR 08.7109
7. Coal—48 CFR 908.7110
8. Arms and Ammunition—48 CFR 908.7111
9. Heavy Water—48 CFR 908.7121(a)
10. Precious Metals—48 CFR 908.7121(b)
11. Lithium—48 CFR 908.7121(c)
12. Products and services of the blind and severely handicapped—41 CFR 101-6.701

(r) **Purchase versus Lease Determinations.** Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease versus purchase determinations. Such determinations shall be made—

1. At time of original acquisition;
2. When lease renewals are being considered; and
(3) At other times as circumstances warrant.

(s) **Quality Assurance.** Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.

(t) **Setoff of Assigned Subcontractor Proceeds.** Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.

(u) **Strategic and Critical Materials.** The Contractor may use strategic and critical materials in the National Defense Stockpile.

(v) **Termination.** When subcontracts are terminated as a result of the termination of all or a portion of this contract, the Contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the Contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the Contracting Officer.

(w) **Unclassified Controlled Nuclear Information.** Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR part 1017.

(x) **Subcontract Flowdown Requirements.** In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the Contractor shall include the following clauses in subcontracts, as applicable:

2. Foreign Travel clause prescribed in 48 CFR 952.247-70.
5. State and local taxes clause prescribed in 48 CFR 970.2904-1.
6. Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).


(y) **Legal Services.** Contractor purchases of litigation and other legal services are subject to the requirements in 10 CFR part 719 and the requirements of this clause.

**CLAUSE I.136 - DEAR 970.5245-1 PROPERTY (AUG 2016) (ALTERNATE I) (AUG 2016) (DEVIATION) (REVISED 02/10/2017 – M0782)**

(a) **Furnishing of Government property.** The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

(b) **Title to property.** Except as otherwise provided by the Contracting Officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Contracting Officer shall direct. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the Contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(c) **Identification.** To the extent directed by the Contracting Officer, the Contractor shall identify Government property coming into the Contractor's possession or custody, by marking and segregating in such a way, satisfactory to the Contracting Officer, as shall indicate its ownership by the Government.

(d) **Disposition.** The Contractor shall make such disposition of Government property which has come into the possession or custody of the Contractor under this contract as the Contracting Officer may direct during the progress of the work or upon completion or termination of this contract. The Contractor may, upon such terms and conditions as the Contracting Officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Contracting Officer and the Contractor as the fair
The amount received by the Contractor as the result of any disposition, or the agreed fair value of any such property acquired by the Contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Government, as the Contracting Officer may direct. Upon completion of the work or the termination of this contract, the Contractor shall render an accounting, as prescribed by the Contracting Officer, of all government property which had come into the possession or custody of the Contractor under this contract.

(e) Protection of government property—management of high-risk property and classified materials. (1) The Contractor shall take all reasonable precautions, and such other actions as may be directed by the Contracting Officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the Contractor's possession or custody.

(2) In addition, the Contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management Regulations (41 CFR chapter 101), the Department of Energy (DOE) Property Management Regulations (41 CFR chapter 109), and other applicable Regulations.

(3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(f) Risk of loss of Government property. (1)(i) The Contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following—

(A) Willful misconduct or lack of good faith on the part of the Contractor's managerial personnel;

(B) Failure of the Contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer to safeguard such property under paragraph (e) of this clause; or

(C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.

(ii) If, after an initial review of the facts, the Contracting Officer informs the Contractor that there is reason to believe that the loss, destruction of, or damage to the
government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Contractor to show that the Contractor should not be required to compensate the government for the loss, destruction, or damage.

(2) In the event that the Contractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the Contractor's compensation to the Government shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(3) The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.

(g) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the Contractor with a value above the threshold set out in the Contractor's approved property management system, the Contractor —

(1) Shall immediately inform the Contracting Officer of the occasion and extent thereof,

(2) Shall take all reasonable steps to protect the property remaining, and

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the Contracting Officer. The Contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(h) Government property for Government use only. Government property shall be used only for the performance of this contract.

(i) Property Management—(1) Property Management System. (i) The Contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation,
and disposition of Government property in its possession under the contract. The Contractor's property management system shall be submitted to the Contracting Officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management Regulations and Department of Energy Property Management Regulations, and such directives or instructions which the Contracting Officer may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for—

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) [Reserved]

(C) Full integration with the Contractor's other administrative and financial systems; and

(D) A method for continuously improving property management practices through the identification of best practices established by “best in class” performers.

(iii) Approval of the Contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.

(2) Property Inventory. (i) Unless otherwise directed by the Contracting Officer, the Contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.

(ii) If the Contractor is succeeding another contractor in the performance of this contract, the Contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The Contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.

(j) The term “contractor's managerial personnel” as used in this clause means the Contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of—

(1) The Contractor's business; or

(2) The Contractor's operations at any one facility or separate location at which this contract is being performed; or
(3) The Contractor's Government property system and/or a Major System Project as defined in DOE Order 413.3B, or the successor version (Version in effect on effective date of contract).

(k) The Contractor shall include this clause in all cost reimbursable subcontracts.

**CLAUSE I.137 - RESERVED (REVISED 09/28/2009 – M0078)**

Substituted for "Clause No. I.137, DEAR 970.5245-1, Property (Dec 2000)"
PART III

SECTION J

LIST OF ATTACHMENTS

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APPENDIX A

ADVANCED UNDERSTANDINGS ON HUMAN RESOURCES

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SECTION I – INTRODUCTION

a. This Advance Understanding is intended to document the principles and measures for evaluation of the Contractor's Human Resource Management (CHRM) programs and other items of allowable personnel costs and related expenses not specifically addressed elsewhere under this contract. Any changes to the personnel policies or practices in place as of the effective date of this contract which would increase costs, is subject to approval in advance by the Contracting Officer.

b. The Laboratory's programs will comply with the Federal Acquisition Regulation (FAR) cost principles and FAR contract clauses, as supplemented by the Department of Energy Acquisition Regulation (DEAR), for all Human Resources programs. The Contractor shall use effective management review procedures and internal controls to assure compliance with the FAR and DEAR as well as to ensure that the cost limitation set forth herein are not exceeded, and that areas which require prior approval of the DOE Contracting Officer or designated representative are reviewed and approved prior to incurrence of costs.

d. This Appendix A may be modified from time to time by agreement of the Parties. Either Party may, at any time, request that this Appendix A be revised, and the Parties hereto agree to negotiate in good faith concerning any requested revision. Revisions to this Appendix A shall be accomplished by executing modification to the prime contract.

e. The Laboratory Director may make exceptions to the provisions of Appendix A when such exceptions are in the best interest of contract operations or will facilitate or enhance contract performance and are approved in advance by the Contracting Officer.

f. The Contractor, or designated representative, shall promptly furnish all reports and information required or otherwise indicated in this Advance Understanding to the Contracting Officer. The Contractor recognizes that the Contracting Officer or designated representative may make other data requests from time to time and the Contractor agrees to cooperate in meeting requests.

g. It is understood that no provision of this Appendix can affect any right guaranteed to a bargaining unit employee by the terms of a Collective Bargaining Agreement.

SECTION II - COMPENSATION

a. Salary Increases.

1. Additional non-base compensation may be paid to an employee who is temporarily assigned responsibilities of a higher level position or other significant duties not part of the employee's regular position. The result of
the additional compensation shall fall within the salary range parameters as published annually. Assignments beyond six months must be approved by the Director, Human Resources. Compensation increases greater than 20% or exceeding one year require Contracting Officer approval. All supplements shall be reported annually to the Contracting Officer.

Notwithstanding any other term or condition set forth in this Contract, the Contracting Officer’s approval of compensation actions pursuant to H.22(c)(A)(iii) will consider:

(A) relative alignment of proposed salaries with subordinate levels;

(B) available market data, comparing total-cash compensation;

(C) total compensation relative to the maximum compensation reimbursement level, per the Bipartisan Budget act of 2013 (BBA), Section 702, Limitation on Allowable Government Contractor Compensation Costs.

b. **Compensation Increase Plan (CIP).**

1. The Contractor shall submit an annual CIP proposal by October 31 for Contracting Officer approval.

2. In order to pay "on-market-on-average," in the calculation of market position, Laboratory salary data shall be matched to survey data extrapolated to July 1st the midpoint of the CIP year (January 1 to December 31).

3. The CIP shall be expressed as a percentage of the projected December 31 base payroll.

c. **Payment of Joint Appointees.**

Home institutions shall be reimbursed for the joint appointee's salary, fringe benefits and overhead according to the percentage of time the joint appointee works for the host institution. The Laboratory may supplement the joint appointee's salary if it is determined that the home university's pay scale is not competitive with the Argonne pay scale for a comparable position. These supplements are non-base. Such payment must be made through an agreement with the home institution, and the supplemental amount will be paid directly to the home institution. In no case will the home institution be reimbursed an amount greater than what a comparable position at the Laboratory would receive. Such transactions will be approved by the Contracting Officer on a case by case basis and will be documented in the quarterly report provided to DOE.
SECTION III - ANCILLARY PAY COMPONENTS

a. Premium Pay

The Contractor is authorized to provide shift differentials and other premium pay, such as Call-in Pay, On-Call Pay, meal allowances, and hazardous duty pay, as approved by the Contracting Officer.

b. Extended Work Week.

When deemed essential to the performance of work under this contract, an extended work week may be established at the Laboratory or any portion thereof.

c. Medical Evacuation Services/Insurance.

Employees required to perform official travel to foreign countries where local care is substandard (according to U.S. standards) may have coverage that pays for evacuation services to an acceptable medical facility in a proximal location on an urgent or emergency basis. The policy shall cover evacuation, expatriation of remains, and ancillary costs associated with the incident. Costs for such coverage for eligible employees are allowable.

d. Temporary Assignment Allowance (Domestic and/or Foreign)

1. Foreign assignment allowances for employees whose physical work location is outside the United States are allowable provided they do not exceed terms offered by DOE (as described in the DOE Handbook on Overseas Assignments). Such allowances will be reported annually to the Contracting Officer.

2. Domestic assignment allowances will require advanced approval by the Contracting Officer.

SECTION IV - PAYMENTS ON SEPARATION

a. Reduction in Force (RIF). When employees are terminated due to a RIF, the following costs are allowable:

1. Pay in lieu of notice. Any employee who is laid off or terminated due to a RIF may be given pay in lieu of the required minimum written notice of termination. Accumulated vacation credit is also paid.

2. Severance pay benefit. As approved by the Contracting Officer.

b. Payments upon termination other than RIF.
1. Sick leave. The payment of accumulated sick leave upon termination is unallowable.

2. Vacation. The Contractor is authorized to pay for accumulated vacation upon termination at the rate in effect as of the date of termination, including any shift differential.

SECTION V - LABOR RELATIONS

a. Collective Bargaining. Costs of fringe benefits and wages paid to employees under collective bargaining agreements are allowable. All other reasonable costs and expenses, such as expenses relating to the grievance process, arbitration and arbitration awards, and other costs and expenses incurred pursuant to applicable collective bargaining agreements and revisions thereto, are also allowable.

b. Grievance and complaint costs. The Contractor is authorized to settle internal employee grievances up to $25,000 without the advance approval of the Contracting Officer.

c. Collective Bargaining Agreements. The Contractor shall provide copies of collective bargaining agreements to the Contracting Officer as they are ratified or modified.

d. Bargaining Unit Activity. Pay for absences from work by employees acting in the capacity of union officers, union stewards and committee members for time spent in handling grievances, negotiating with the Laboratory, and serving on labor management (Laboratory) committees, are allowable.

SECTION VI – SETTLEMENT COSTS

Settlement Cost – The Contractor is authorized to resolve settlements of claims up to $25,000 without the advance approval of the Contracting Officer. Worker’s Compensation claims settlements shall be handled in accordance with H.25.

SECTION VII – PROGRAMS INVOLVING EMPLOYEE ABSENCE FROM THE WORKPLACE

a. Paid Leave.

The Laboratory will provide a reasonable and cost effective paid leave program. Paid leave includes vacation, holiday, sick, jury, bereavement, military, voting and personal leave according to approved Laboratory schedules. Only leave accruals included in the annual benefit value study shall be allowable.

b. Unpaid Leaves of Absence.
The Laboratory will not count periods of approved leave without pay as Contractor service except as approved by the Contracting Officer. The effect of leave without pay on retirement and group insurance plans is governed by the group insurance and retirement plan policies in effect at the time the leave begins in accordance with applicable law and Contractor policy.

c. **Assignments of Laboratory Employees to Other Institutions for Teaching and Research.**

The Contractor shall be reimbursed for expenditures consistent with Laboratory policy arising out of an employee assignment to another institution for teaching and/or research if the assignment is approved by the other institution and does not exceed one year. Contracting Officer approval is required for deviations from these limitations.

d. **Assignment of Laboratory Employees to DOE and other Federal and Non-Federal Entities.**

Assignments shall be made in accordance with DOE policy.

e. **Military Leave.**

Military leave and associated pay is authorized in accordance with Contractor policies, and/or State or Federal law.

f. **Security Leave.**

Wages or salaries paid to employees when access authorization is suspended by DOE will be allowable costs under the following conditions:

If a position which does not require access authorization is not available, the Laboratory Director or designee may place the employee on leave with pay at his or her base compensation until final disposition of the case. Leave with pay requires the Contracting Officer’s concurrence that no position is available to which the employee might reasonably be transferred.

**SECTION VIII – EMPLOYEE TRAINING, EDUCATION AND DEVELOPMENT**

a. The Laboratory shall establish training, education and development programs that are consistent with DOE requirements and guidance, industry standards, and other Federal, State and local regulations. These programs shall ensure that employees are well-qualified and competent to manage facilities and meet mission requirements through administrative, professional and technical excellence.

1. **Training.**
The Laboratory may permit selected employees to attend training classes while receiving full pay in order to enable them to acquire the needed skills to qualify them for more responsible jobs and maintain competence in their fields.

2. **Education.**

   (A) The Laboratory may approve and support educational courses taken by employees which serve to improve efficiency and productivity of Laboratory operations, increase needed skills, or prepare employees for increased responsibilities.

   (B) An employee or third Party on behalf of an employee may be paid for tuition, required textbooks and fees for courses approved in advance by the Laboratory.

3. **Development.**

   The Contractor shall be reimbursed for the cost of personnel training and personnel development programs, including but not limited to, apprenticeship training, supervisory training, management development, career updating and redirection, and work-study and other programs supporting the development of staff in fields of interest to the Laboratory.

   b. **Advanced Degree Program.**

   With case-by-case approval of the Contracting Officer, the Contractor may grant academic leave with pay to employees for the purpose of continuing or completing a graduate-level degree related to their work. Such leave will be limited to a total of nine months. This program shall be limited to a lifetime limit of 12 months.

   Eligible employees must have been continuously employed by the Contractor in a regular full time status for three or more years before applying for academic leave.

   An employee to whom academic leave is granted is required to furnish a written statement that the employee will return to employment at the Laboratory upon completion of such leave and remain in employment for a minimum of one year. If the employee does not return to the Laboratory, all education costs paid to or for the employee for that academic leave shall be reimbursed to the Laboratory by the employee. Should such employee be transferred to another DOE facility other than the Laboratory within a period equal to the length of the academic leave, the action will be reviewed with the Contracting Officer to determine appropriate action.

   Any travel involved will be at the employee's expense.
Status of Employment - Employees on leave under this Article will continue to be Laboratory employees and shall be covered by all applicable provisions of this Appendix.

SECTION IX – EMPLOYEE PROGRAMS

a. **Service and Retirement Awards.**

The Contractor may expend from the Laboratory’s operating budget, an amount not to exceed $30.00 for each regular full-time employee on the payroll September 30 of each year without Contracting Officer approval. The types of awards may include, for example, Length of Service/Retirement Recognition; Safety Awards; Suggestion Program, Special Employee recognition, and other non-performance based awards.

b. **Performance Award Programs.**

The Contractor may recognize employees or groups of employees who have distinguished themselves by their significant contributions and outstanding performance in the course of their work through distribution of non-base compensation awards (i.e., such as annual performance bonus). These may be provided to employees based on individual performance as documented in annual performance appraisals.

Additionally, noteworthy achievements and special efforts (e.g., Pacesetter Awards) may be recognized by the presentation of cash awards, plaques, certificates, and memorabilia to individuals or groups of employees

Non-base compensation award programs are subject to DOE Contracting Officer approval.

c. **Patent Awards.**

An award of $250 may be made to any Contractor employee, assigned employee, loaned employee, or other affiliate of the Contractor whose development of an invention resulting from the employee’s work for the Contractor under the Prime Contract is processed for a United States patent application, up to a maximum of $1500 in awards for a team of co-creators on any one application. This award can also be made to creators of noteworthy copyrighted material or mask works upon filing of the copyright for the purpose of registration and commercialization through licensing by the Laboratory.

An award of $500 may be paid to each such inventor upon the issuance of a United States patent, up to a maximum of $3,000 in awards for multiple inventors on any one patent.
The Contractor may provide each such inventor with a plaque signifying the issuance of a United States patent.

d. **Cost of Health Services.**

The Contractor shall be reimbursed for the costs of operating the Health Division for Laboratory employees and directly reimbursed for the cost of health services for DOE site employees, including but not limited to the following: Pre-employment physicals and other medical examinations required to meet Laboratory employment requirements, operation of a health unit which provides medical care for occupational injuries and to provide minor relief for minor physical complaints of employees while at the Laboratory and health examinations provided as a health service for employees.

e. **Other.**

1. The Contractor may develop, administer and support a variety of employee programs. These programs may include athletic, cultural, and family activities. Participant fees may be collected to partially offset the cost of some or all of these activities. Appropriate facilities, utilities, and maintenance may be provided by the Laboratory. Entertainment costs, including costs of amusement, diversions, and social activities are unallowable, as well as directly related costs such as tickets, meals, lodging, rentals, transportation and gratuities.

2. Wellness Program. Costs of a Wellness Program to promote employee health and fitness are allowable.

3. Employee Assistance Program. The Contractor shall (1) maintain a program of preventive services, education, short-term counseling, coordination with and referrals to outside agencies, and follow-up upon return to work that conforms to the requirements of 10 CFR 707.6, Employee Assistance, Education, and Training; (2) Submit for approval by the Contracting Officer any changes to the employee assistance program implementation plan; (3) Prepare and submit information to DOE concerning Employee Assistance Program services as requested by the Contracting Officer. Such reports shall not include individual identifiers.

**SECTION X - COSTS OF RECRUITING PERSONNEL**

a. The Contractor may incur costs for the recruitment of personnel, as follows:

1. Costs of advertising and agency and consultant fees.

2. Recruiting Expenses - The Laboratory may reimburse consistent with other
provisions of this contract, employees traveling for recruiting purposes the actual cost incurred for the following expenses: transportation, lodging, and meals for prospective employees and, when approved, by the Laboratory Director, for spouses or representatives of academic institutions, professional societies and other scientific organizations and incidental expenses incurred in recruiting.

3. New or prospective employees who have been offered and have accepted a position, and who are required to take a pre-placement physical examination, shall be reimbursed for costs of the physical examination.

4. Costs associated with pre-employment screening shall be allowable.

b. Recruitment/Retention Tools.

1. The Contractor may pay a sign-on bonus to recruit employees with critical skills.

2. An annual retention bonus is authorized to retain employees with critical skills or whose expertise is critical to the completion of a specific project.

3. The Contractor is authorized to provide service credit to critical skill new-hires to previous relevant experience at another DOE facility or external organization. Credited service may be used to establish eligibility for, or determine accrual of service-based benefits (i.e. vacation accruals, vesting, or service – unless severance has been paid for prior service as indicated in Clause H.22(c)(1)(D)), in accordance with the contractor’s policies.

SECTION XI – REDUCTIONS IN CONTRACTOR EMPLOYMENT

Reductions in employment will be conducted in accordance with the contractor’s personnel management policies and practices and in accordance with applicable Departmental guidance on workforce restructuring, as revised from time to time.

a. Workforce Restructuring Actions

1. The Contractor will notify or request approval of workforce restructuring actions in accordance with the following:

<table>
<thead>
<tr>
<th>RESTRUCTURING ACTION</th>
<th>#EMPLOYEES POTENTIALLY IMPACTED</th>
<th>ACTION REQUIRED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voluntary</td>
<td>100+</td>
<td>CO Notification</td>
</tr>
<tr>
<td>Involuntary</td>
<td>100+</td>
<td>CO Approval</td>
</tr>
</tbody>
</table>
(A) Notifications will be consistent with the following parameters:

i. In accordance with approved laboratory/contractor policies;

ii. No enhanced benefits (severance or pension);

iii. No backfilling (internally or externally) or re-employment of employees for a one year period after severance is paid;

iv. A business case is submitted 5 business days in advance of notification date that include maximum number of voluntary reductions, maximum dollars, positions/skills impacted; reasons reductions are needed, copy of self-select waivers, and communication plan; and

v. Voluntary separations offered to employees in a non-discriminatory and legally compliant manner.

(B) Actions requiring approval will additionally require a workforce restructuring plan prepared in accordance with DOE policy.

(C) Approval actions shall be submitted a minimum of 10 business days prior to announcement to employees.

(D) A diversity analysis shall be submitted a minimum of 10 business days prior to notification to individual impacted employees if at the end of the action, or any significant phase of it, 100 or more employees will be involuntarily separated in a rolling 12-month period.

(E) Waivers or self-select forms that vary from those provided in DOE policy documents are subject to approval by DOE.

2 Any employee who volunteers for layoff or retirement during a time period in which the Contractor has a DOE approved or Contractor Management approved active reduction in force plan will be eligible for severance pay provided the termination is accepted by Laboratory management and results in the retention of an employee who otherwise would have been laid off.

(A) If DOE approval is not required, severance may be paid to an employee who volunteers for layoff or retirement if contractor management has approved the restructuring action and the termination results in the retention of an employee who otherwise would be laid off.

(B) Severance is not payable to an employee who volunteers for layoff or retirement if the termination is not associated with a restructuring action approved and initiated by contractor management.

3 The Contractor, to the extent practicable, shall provide outplacement services in the forms of skills assessment and resume preparation to those
employees who are involuntarily separated due to a layoff.

b. **Displaced Worker Medical Benefit.**

Contractor employees who separate from employment voluntarily or involuntarily (other than for cause) and who were eligible for medical insurance coverage under the DOE Displaced Workers’ Medical Benefits Program, provided they are not eligible for coverage under another plan, e.g., another employer’s group health plan, the contractor’s Retiree Medical Plan, a spouse’s medical plan, or Medicare, based on the following schedule:

1. First Year: The Contractor’s contribution for an active employee.
2. Second Year: One half of the Contractor’s COBRA premium.
3. Third and Subsequent Years: Reasonable administrative costs that exceed the two percent administrative fee paid by the displaced worker.

Eligibility is determined in accordance with Departmental policy on workforce restructuring.

**SECTION XII – EMPLOYEE BENEFITS**

a. **Energy Employees’ Occupational Illness Compensation Program Act (EEOICPA).**

The Laboratory agrees to comply with requests for information, records, and other program requirements to ensure the orderly administration and adjudication of claims under the EEOICPA.

b. **Workplace Child-Care Centers or Other Facilities for Children.**

The Laboratory is authorized to provide a workplace child-care benefit program consistent with the written directions of the Contracting Officer.

If applicable, the Contractor shall sub-contract the operation of the workplace child-care center. Support costs for labor, materials, and supplies expended for the operation of a workplace child-care facility are unallowable. The facility is for the exclusive use of dependent children and grandchildren of DOE and Laboratory employees as well as of employees of universities, joint-appointees and Laboratory contractors who are on long-term assignment on the Laboratory’s premises advancing the Laboratory’s mission under its Prime Contract. Expense items such as utilities, maintenance, food services, medical services, or supplies already used in support of site operations and readily available are allowable. The cost of meals shall not be allowable.
SECTION XIII – SPECIAL PROFESSIONAL SERVICES

The Laboratory may pay fees to persons who deliver lectures, conduct courses or symposia, or perform similar professional services to the Laboratory. The fee per day of service shall not exceed $1,000 and the total honoraria given an individual may not exceed $5,000 in a calendar year. Fees shall be based upon the individual’s professional standing, the value of the service, the degree of inconvenience to the individual, amount of time devoted to the service, and other relevant factors. In the case of persons from nearby institutions or organizations, the fee may include an amount in lieu of reasonable expenses. Travel expenses which are reimbursable under the provisions of this Appendix may be paid in addition to the fee.

SECTION XIV – COMMUNITY PROGRAMS

Subject to prior approval of the Contracting Officer, the costs of participating in community service activities may be allowable to the extent participation does not adversely impact contract performance.
FY 2018 Performance Evaluation and Measurement Plan

Applicable to the Management and Operation of Argonne National Laboratory
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1.2 Provide Quality Leadership in Science and Technology that Advances Community Goals and DOE Mission Goals

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2.4 Utilization of Facility(ies) to Provide Impactful Science and Technology Results and Benefits to External User Communities

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Attachment I Program Office Goal & Objective Weightings
INTRODUCTION

This document, the Performance Evaluation and Measurement Plan (PEMP), primarily serves as DOE’s Quality Assurance/Surveillance Plan (QASP) for the evaluation of UChicago Argonne LLC (hereafter referred to as “the Contractor”) performance regarding the management and operations of the Argonne National Laboratory (hereafter referred to as “the Laboratory”) for the evaluation period from October 1, 2017, through September 30, 2018. The performance evaluation provides a standard by which to determine whether the Contractor is managerially and operationally in control of the Laboratory and is meeting the mission requirement and performance expectations/objectives of the Department as stipulated within this contract.

This document also describes the distribution of the total available performance-based fee and the methodology for determining the amount of fee earned by the Contractor as stipulated within the clauses entitled, “Determining Total Available Performance Fee and Fee Earned,” “Conditional Payment of Fee, Profit, or Incentives,” and “Total Available Fee: Base Fee Amount and Performance Fee Amount.” In partnership with the Contractor and other key customers, the Department of Energy (DOE) Headquarters (HQ) and the Site Office have defined the measurement basis that serves as the Contractor’s performance-based evaluation and fee determination.

The Performance Goals (hereafter referred to as Goals), Performance Objectives (hereafter referred to as Objectives) and set of notable outcomes discussed herein were developed in accordance with contract expectations set forth within the contract. The notable outcomes for meeting the Objectives set forth within this plan have been developed in coordination with HQ program offices as appropriate. Except as otherwise provided for within the contract, the evaluation and fee determination will rest solely on the Contractor’s performance within the Performance Goals and Objectives set forth within this plan.

The overall performance against each Objective of this performance plan, to include the evaluation of notable outcomes, shall be evaluated jointly by the appropriate HQ office, major customer and/or the Site Office as appropriate. This cooperative review methodology will ensure that the overall evaluation of the Contractor results in a consolidated DOE position taking into account specific notable outcomes as well as all additional information available to the evaluating office. The Site Office shall work closely with each HQ program office or major customer throughout the year in evaluating the Contractor’s performance and will provide observations regarding programs and projects as well as other management and operation activities conducted by the Contractor throughout the year.

Section I provides information on how the performance rating (grade) for the Contractor, as well as how the performance-based incentives fee earned (if any) will be determined. As applicable, the Section also provides information on the award term eligibility requirements.

Section II provides the detailed information concerning each Goal, their corresponding Objectives, and notable outcomes identified, along with the weightings assigned to each Goal and Objective and a table for calculating the final grade for each Goal.

I. DETERMINING THE CONTRACTOR’S PERFORMANCE RATING, PERFORMANCE-BASED FEE AND AWARD TERM ELIGIBILITY (as applicable)

The FY 2017 Contractor performance grades for each Goal will be determined based on the weighted sum of the individual scores earned for each of the Objectives described within this document for Science and
Technology (S&T), Contractor/Laboratory Leadership and for Management and Operations (M&O). Each Goal is composed of two or more weighted Objectives. Additionally, a set of notable outcomes has been identified to highlight key aspects/areas of performance deserving special attention by the Contractor for the upcoming fiscal year. Each notable outcome is linked to one or more Objectives, and failure to meet expectations against any notable outcome will result in a grade less than B+ for that Objective(s) (i.e., if the contractor fails to meet expectations against a notable outcome tied to an Objective under Goal 1.0, 2.0, or 3.0, the SC program office that assigned the notable outcome shall award a grade less than “B+” for the Objective(s) to which the notable outcome is linked; and if the contractor fails to meet expectations against a notable outcome tied to an Objective under Goal 4.0, 5.0, 6.0, 7.0 or 8.0, SC shall award a grade less than “B+” for the Objective(s) to which the notable outcome is linked). Performance above expectations against a notable outcome will be considered in the context of the Contractor’s entire performance with respect to the relevant Objective. The following section describes SC’s methodology for determining the Contractor’s grades at the Objective level.

Performance Evaluation Methodology:
The purpose of this section is to establish a methodology to develop grades at the Objective level. Each evaluating office shall provide a proposed grade and corresponding numerical score for each Objective (see Figure 1 for SC’s grade scale). Each evaluation will measure the degree of effectiveness and performance of the Contractor in meeting the corresponding Objectives.

<table>
<thead>
<tr>
<th>Final Grade</th>
<th>A+</th>
<th>A</th>
<th>A-</th>
<th>B+</th>
<th>B</th>
<th>B-</th>
<th>C+</th>
<th>C</th>
<th>C-</th>
<th>D</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Score</td>
<td>4.3-4.1</td>
<td>4.0-3.8</td>
<td>3.7-3.5</td>
<td>3.4-3.1</td>
<td>3.0-2.8</td>
<td>2.7-2.5</td>
<td>2.4-2.1</td>
<td>2.0-1.8</td>
<td>1.7-1.1</td>
<td>1.0-0.8</td>
<td>0.7-0</td>
</tr>
</tbody>
</table>

For the three S&T Goals (1.0 – 3.0) the Contractor shall be evaluated against the defined levels of performance provided for each Objective under the S&T Goals. The Contractor performance under Goal 4.0 will also be evaluated using the defined levels of performance described for the three Objectives under Goal 4.0. The descriptions for these defined levels of performance are included in Section II.

It is the DOE’s expectation that the Contractor provides for and maintains management and operational (M&O) systems that efficiently and effectively support the current mission(s) of the Laboratory and assure the Laboratory’s ability to deliver against DOE’s future needs. In evaluating the Contractor’s performance DOE shall assess the degree of effectiveness and performance in meeting each of the Objectives provided under each of the Goals. For the four M&O Goals (5.0 – 8.0) DOE will rely on a combination of the information through the Contractor’s own assurance systems, the ability of the Contractor to demonstrate the validity of this information, and DOE’s own independent assessment of the Contractor’s performance across the spectrum of its responsibilities. The latter might include, but is not limited to: operational awareness (daily oversight) activities, formal assessments conducted, “For Cause” reviews (if any), and other outside agency reviews (OIG, GAO, DCAA, etc.).

The mission of the Laboratory is to deliver the science and technology needed to support Departmental missions and other sponsor’s needs. Operational performance at the Laboratory meets DOE’s expectations (defined as the grade of B+) for each Objective if the Contractor is performing at a level that fully supports the Laboratory’s current and future science and technology mission(s). Performance that has, or has the potential to, 1) adversely impact the delivery of the current and/or future DOE/Laboratory mission(s), 2) adversely impact the DOE and or the Laboratory’s reputation, or 3) does not provide the competent people, necessary facilities and robust systems necessary to ensure sustainable performance, shall be graded below expectations as defined in Figure I-1, below.
The Department sets our expectations high, and expects performance at that level to optimize the efficient and effective operation of the Laboratory. Thus, the Department does not expect routine Contractor performance above expectations against the M&O Goals (5.0 – 8.0). Performance that might merit grades above B+ would need to reflect a Contractor’s significant contributions to the management and operations at the system of Laboratories, or recognition by external, independent entities as exemplary performance.

Definitions for the grading scale for the Goal 5.0 – 8.0 Objectives are provided in Figure I-1, below:

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Numerical Grade</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>A+</td>
<td>4.3-4.1</td>
<td>Significantly exceeds expectations of performance against all aspects of the Objective in question. The Contractor’s systems function at a level that fully supports the Laboratory’s current and future science and technology mission(s). Performance is notable for its significant contributions to the management and operations across the SC system of laboratories, and/or has been recognized by external, independent entities as exemplary.</td>
</tr>
<tr>
<td>A</td>
<td>4.0-3.8</td>
<td>Notably exceeds expectations of performance against all aspects of the Objective in question. The Contractor’s systems function at a level that fully supports the Laboratory’s current and future science and technology mission(s). Performance is notable for its contributions to the management and operations across the SC system of laboratories, and/or has been recognized by external, independent entities as exemplary.</td>
</tr>
<tr>
<td>A-</td>
<td>3.7-3.5</td>
<td>Exceeds expectations of performance against all aspects of the Objective in question. The Contractor’s systems function at a level that fully supports the Laboratory’s current and future science and technology mission(s).</td>
</tr>
<tr>
<td>B+</td>
<td>3.4-3.1</td>
<td>Meets expectations of performance against all aspects of the Objective in question. The Contractor’s systems function at a level that fully supports the Laboratory’s current and future science and technology mission(s). No performance has, or has the potential to, adversely impact 1) the delivery of the current and/or future DOE/Laboratory mission(s), 2) the DOE and/or the Laboratory’s reputation, or does not 3) provide a sustainable performance platform.</td>
</tr>
<tr>
<td>B</td>
<td>3.0 -2.8</td>
<td>Just misses meeting expectations of performance against a few aspects of the Objective in question. In a few minor instances, the Contractor’s systems function at a level that does not fully support the Laboratory’s current and future science and technology mission, or provide a sustainable performance platform.</td>
</tr>
<tr>
<td>B-</td>
<td>2.7-2.5</td>
<td>Misses meeting expectations of performance against several aspects of the Objective in question. In several areas, the Contractor’s systems function at a level that does not fully support the Laboratory’s current and future science and technology mission, or provide a sustainable performance platform.</td>
</tr>
<tr>
<td>C+</td>
<td>2.4-2.1</td>
<td>Misses meeting expectations of performance against many aspects of the Objective in question. In several notable areas, the Contractor’s systems function at a level that does not fully support the Laboratory’s current and future science and technology mission or provide a sustainable performance platform, and/or have affected the reputation of the Laboratory or DOE.</td>
</tr>
<tr>
<td>C</td>
<td>2.0-1.8</td>
<td>Significantly misses meeting expectations of performance against many aspects of the Objective in question. In many notable areas, the Contractor’s systems do not support the Laboratory’s current and future science and</td>
</tr>
</tbody>
</table>
Figure I-1. Letter Grade and Numerical Grade Definitions

Calculating Individual Goal Scores and Letter Grades:
Each Objective is assigned the earned numerical score by the evaluating office as stated above. The Goal rating is then computed by multiplying the numerical score by the weight of each Objective within a Goal. These values are then added together to develop an overall numerical score for each Goal. For the purpose of determining the final Goal grade, the raw numerical score for each Goal will be rounded to the nearest tenth of a point using the standard rounding convention discussed below and then compared to Figure I-1. A set of tables is provided at the end of each Performance Goal section of this document to assist in the calculation of Objective numerical scores to the Goal grade. No overall rollup grade shall be provided.

As stated above the raw numerical score from each calculation shall be carried through to the next stage of the calculation process. The raw numerical score for weighted final S&T and weighted final M&O will be rounded to the nearest tenth of a point for purposes of determining fee. A standard rounding convention of x.44 and less rounds down to the nearest tenth (here, x.4), while x.45 and greater rounds up to the nearest tenth (here, x.5).

The eight Performance Goal grades shall be used to create a report card for the laboratory (see Figure 2, below).

Determining the Amount of Performance-Based Fee Earned:
SC uses the following process to determine the amount of performance-based fee earned by the contractor. The S&T score from each evaluator shall be used to determine an initial numerical score for S&T (see
Table A, below), and the rollup of the scores for each M&O Performance Goal shall be used to determine an initial numerical M&O score (see Table B, below).

<table>
<thead>
<tr>
<th>S&amp;T Performance Goal</th>
<th>Numerical Score</th>
<th>Weight¹</th>
<th>Initial S&amp;T Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0 Mission Accomplishment</td>
<td>TBD</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>2.0 Design, Fabrication, Construction and Operation of Research Facilities</td>
<td>TBD</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>3.0 Science and Technology Program Management</td>
<td>25%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table A: Fiscal Year Contractor Evaluation Initial S&T Score Calculation

¹ For Goals 1.0 and 2.0, the weights are based on fiscal year costs for each program distributed between Goals 1.0 and 2.0; however, a minimum weight of 30% for Goal 1.0 is required regardless of program distribution. For Goal 3.0, the weight is set as a fixed percentage for all laboratories.

<table>
<thead>
<tr>
<th>M&amp;O Performance Goal</th>
<th>Numerical Score</th>
<th>Weight</th>
<th>Weighted Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.0 Integrated Safety, Health, and Environmental Protection</td>
<td>30%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.0 Business Systems</td>
<td>30%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.0 Operating, Maintaining, and Renewing Facility and Infrastructure Portfolio</td>
<td>20%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.0 Integrated Safeguards and Security Management and Emergency Management Systems</td>
<td>20%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table B: Fiscal Year Contractor Evaluation Initial M&O Score Calculation

These initial scores will then be adjusted based on the numerical score for Goal 4.0 (see Table C, below).

<table>
<thead>
<tr>
<th></th>
<th>Numerical Score</th>
<th>Weight</th>
<th>Final S&amp;T Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial S&amp;T Score</td>
<td>0.75</td>
<td>0.25</td>
<td></td>
</tr>
<tr>
<td>Goal 4.0</td>
<td></td>
<td>0.25</td>
<td></td>
</tr>
</tbody>
</table>

Table C: FY Fiscal Year Final S&T and M&O Score Calculation

The percentage of the available performance-based fee that may be earned by the Contractor shall be determined based on the final score for S&T (see Table C) and then compared to Figure 3, below. The final score for M&O from Table C shall then be utilized to determine the final fee multiplier (see Figure 3), which shall be utilized to determine the overall amount of performance-based fee earned for FY 2018 as calculated within Table D.
<table>
<thead>
<tr>
<th>Overall Final Score for either S&amp;T or M&amp;O from Table C</th>
<th>Percent S&amp;T Fee Earned</th>
<th>M&amp;O Fee Multiplier</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.3</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>4.2</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>4.1</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>4.0</td>
<td>97%</td>
<td>100%</td>
</tr>
<tr>
<td>3.9</td>
<td>97%</td>
<td>100%</td>
</tr>
<tr>
<td>3.8</td>
<td>94%</td>
<td>100%</td>
</tr>
<tr>
<td>3.7</td>
<td>94%</td>
<td>100%</td>
</tr>
<tr>
<td>3.6</td>
<td>94%</td>
<td>100%</td>
</tr>
<tr>
<td>3.5</td>
<td>94%</td>
<td>100%</td>
</tr>
<tr>
<td>3.4</td>
<td>91%</td>
<td>100%</td>
</tr>
<tr>
<td>3.3</td>
<td>91%</td>
<td>100%</td>
</tr>
<tr>
<td>3.2</td>
<td>91%</td>
<td>100%</td>
</tr>
<tr>
<td>3.1</td>
<td>91%</td>
<td>100%</td>
</tr>
<tr>
<td>3.0</td>
<td>88%</td>
<td>95%</td>
</tr>
<tr>
<td>2.9</td>
<td>88%</td>
<td>95%</td>
</tr>
<tr>
<td>2.8</td>
<td>85%</td>
<td>90%</td>
</tr>
<tr>
<td>2.7</td>
<td>85%</td>
<td>90%</td>
</tr>
<tr>
<td>2.6</td>
<td>85%</td>
<td>90%</td>
</tr>
<tr>
<td>2.5</td>
<td>85%</td>
<td>90%</td>
</tr>
<tr>
<td>2.4</td>
<td>75%</td>
<td>85%</td>
</tr>
<tr>
<td>2.3</td>
<td>75%</td>
<td>85%</td>
</tr>
<tr>
<td>2.2</td>
<td>75%</td>
<td>85%</td>
</tr>
<tr>
<td>2.1</td>
<td>75%</td>
<td>85%</td>
</tr>
<tr>
<td>2.0</td>
<td>50%</td>
<td>75%</td>
</tr>
<tr>
<td>1.9</td>
<td>50%</td>
<td>75%</td>
</tr>
<tr>
<td>1.8</td>
<td>50%</td>
<td>75%</td>
</tr>
<tr>
<td>1.7</td>
<td>0%</td>
<td>60%</td>
</tr>
<tr>
<td>1.6</td>
<td>0%</td>
<td>60%</td>
</tr>
<tr>
<td>1.5</td>
<td>0%</td>
<td>60%</td>
</tr>
<tr>
<td>1.4</td>
<td>0%</td>
<td>60%</td>
</tr>
<tr>
<td>1.3</td>
<td>0%</td>
<td>60%</td>
</tr>
<tr>
<td>1.2</td>
<td>0%</td>
<td>60%</td>
</tr>
<tr>
<td>1.1</td>
<td>0%</td>
<td>60%</td>
</tr>
<tr>
<td>1.0 to 0.8</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>0.7 to 0.0</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>

Figure 3. Performance-Based Fee Earned Scale

<table>
<thead>
<tr>
<th>Overall Fee Determination</th>
<th>Percent S&amp;T Fee Earned</th>
<th>M&amp;O Fee Multiplier</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>x</td>
<td>x</td>
</tr>
</tbody>
</table>

Table D. Final Percentage of Performance-Based Fee Earned Determination
The Federal Acquisition Regulations (FAR) requirements for using and administering cost-plus-award-fee contracts were modified to provide for a five-level adjectival grading system with associated levels of available fee. SC has addressed the FAR 16 language by mapping its standard numerical scores and associated fee determinations to the FAR Adjectival Rating System, as noted in Figure 4 on the next page.

<table>
<thead>
<tr>
<th>Range of Overall Final Score for S&amp;T from Figure 3.</th>
<th>FAR Adjectival Rating</th>
<th>Maximum Performance-Fee Pool Available to be Earned</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1 to 4.3</td>
<td>Excellent</td>
<td>100%</td>
</tr>
<tr>
<td>2.5 to 3.0</td>
<td>Very Good</td>
<td>88%</td>
</tr>
<tr>
<td>2.1 to 2.4</td>
<td>Good</td>
<td>75%</td>
</tr>
<tr>
<td>1.8 to 2.0</td>
<td>Satisfactory</td>
<td>50%</td>
</tr>
<tr>
<td>0.0 to 1.7</td>
<td>Unsatisfactory</td>
<td>0%</td>
</tr>
</tbody>
</table>

**Figure 4. Crosswalk of SC Numerical Scores and the FAR 16 Adjectival Rating System**

Adjustment to the Letter Grade and/or Performance-Based Fee Determination:
The lack of performance objectives and notable outcomes in this plan do not diminish the need to comply with minimum contractual requirements. Although the performance-based Goals and their corresponding Objectives shall be the primary means utilized in determining the Contractor’s performance grade and/or amount of performance-based fee earned, the Contracting Officer may unilaterally adjust the rating and/or reduce the otherwise earned fee based on the Contractor’s performance against all contract requirements as set forth in the Prime Contract. While reductions may be based on performance against any contract requirement, specific note should be made to contract clauses which address reduction of fee including: Standards of Contractor Performance Evaluation, “DEAR 970.5215-1 – Total Available Fee: Base Fee Amount and Performance Fee Amount”; and “DEAR 970.5215-3 - Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts”. Data to support rating and/or fee adjustments may be derived from other sources to include, but not limited to: operational awareness (daily oversight) activities, “For Cause” reviews (if any), and other outside agency reviews (OIG, GAO, DCAA, etc.), as needed.

The adjustment of a grade and/or reduction of otherwise earned fee will be determined by the severity of the performance failure and consideration of mitigating factors. “DEAR 970.5215-3 Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts” is the mechanism used for reduction of fee as it relates to performance failures related to safeguarding of classified information and to adequate protection of environment, health and safety. Its guidance can also serve as an example for reduction of

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1 See Policy Flash 2010-05, Federal Acquisition Circular 2005-37.
fee in other areas.

The final Contractor performance-based grades for each Goal and fee earned determination will be contained within a year-end report, documenting the results from the DOE review. The report will identify areas where performance improvement is necessary and, if required, provide the basis for any performance-based rating and/or fee adjustments made from the otherwise earned rating/fee based on Performance Goal achievements.

Determining Award Term Eligibility:
The base term of the Prime Contract is five years. The Prime Contract contains a non-monetary performance incentive, in Section F “Deliveries or Performance” at Clause F.2. “Award Term Incentive (Special)”, which allows the contractor to earn up to an additional fifteen years of Prime Contract term for exemplary performance. The contractor has earned ten of the fifteen available years of award term by virtue of its contract performance throughout the base and awarded performance incentive contract term. Therefore, five additional years of award term remain obtainable to be earned as a result of exemplary performance in accordance with the contract terms.

II. PERFORMANCE GOALS, OBJECTIVES & NOTABLE OUTCOMES

Background

The current performance-based management approach to oversight within DOE has established a new culture within the Department with emphasis on the customer-supplier partnership between DOE and the laboratory contractors. It has also placed a greater focus on mission performance, best business practices, cost management, and improved contractor accountability. Under the performance-based management system the DOE provides clear direction to the laboratories and develops annual performance plans (such as this one) to assess the contractors performance in meeting that direction in accordance with contract requirements. The DOE policy for implementing performance-based management includes the following guiding principles:

- Performance objectives are established in partnership with affected organizations and are directly aligned to the DOE strategic goals;
- Resource decisions and budget requests are tied to results; and
- Results are used for management information, establishing accountability, and driving long-term improvements.

The performance-based approach focuses the evaluation of the Contractor’s performance against these Performance Goals. Progress against these Goals is measured through the use of a set of Objectives. The success of each Objective will be measured based on demonstrated performance by the laboratory, and on a set of notable outcomes that focus laboratory leadership on the specific items that are the most important initiatives and highest risk issues the laboratory must address during the year. These notable outcomes should be objective, measurable, and results-oriented to allow for a definitive determination of whether or not the specific outcome was achieved at the end of the year.

Performance Goals, Objectives, and Notable Outcomes

The following sections describe the Performance Goals, their supporting Objectives, and associated notable outcomes for FY 2018.
GOAL 1.0  Provide for Efficient and Effective Mission Accomplishment

The science and technology programs at the Laboratory produce high-quality, original, and creative results that advance science and technology; demonstrate sustained scientific progress and impact; receive appropriate external recognition of accomplishments; and contribute to overall research and development goals of the Department and its customers.

The weight of this Goal is TBD%.

The Provide for Efficient and Effective Mission Accomplishment Goal measures the overall effectiveness and performance of the Contractor in delivering science and technology results which contribute to and enhance the DOE’s mission of protecting our national and economic security by providing world-class scientific research capacity and advancing scientific knowledge by supporting world-class, peer-reviewed scientific results, which are recognized by others.

Each Objective within this Goal is to be assigned the appropriate numerical score by the Office of Science Program Office as identified below. The overall Goal score from each Program Office is computed by multiplying numerical scores earned by the weight of each Objective, and summing them (see Table 1.1). The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual cost for FY 2018.

- Office of Advanced Scientific Computing Research (ASCR)
- Office of Basic Energy Sciences (BES)
- Office of Biological and Environmental Research (BER)
- Office of Defense Nuclear Nonproliferation (DNN)
- Office of Electricity Delivery and Energy Reliability (OE)
- Office of Energy Efficiency and Renewable Energy (EERE)
- Office of Fossil Energy (FE)
- Office of High Energy Physics (HEP)
- Office of Intelligence (IN)
- Office of Nuclear Physics (NP)
- Office of Nuclear Energy (NE)
- Office of Workforce Development for Teachers and Scientists (WDTS)
- Department of Homeland Security (DHS)
- National Institutes of Health (NIH)
- Nuclear Regulatory Commission (NRC)

The overall performance score and grade for this Goal will be determined by multiplying the overall score assigned by each of the offices identified above by the weightings identified for each and then summing them (see Table 1.2, below). The overall score earned is then compared to Table 1.3 to determine the overall letter grade for this Goal. The Contractor’s success in meeting each Objective shall be determined based on the Contractor’s performance as viewed by the Office of Science, other cognizant HQ Program Offices, and other customers for which the Laboratory conducts work. Should one or more of the HQ Program Offices choose not to provide an evaluation for this Goal and its corresponding Objectives the weighting for the remaining HQ Program Offices shall be recalculated based on their percentage of cost for FY 2018 as compared to the total cost for those remaining HQ Program Offices.
Objectives

1.1 Provide Science and Technology Results with Meaningful Impact on the Field

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- Performance of the Laboratory with respect to proposed research plans;
- Performance of the Laboratory with respect to community impact and peer review; and
- Performance of the Laboratory with respect to impact to DOE mission needs.

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective. The evaluator(s) may consider the following as measured through progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.

- Impact of publications on the field, as measured primarily by peer review;
- Impact of S&T results on the field, as measured primarily by peer review;
- Impact of S&T results outside the field indicating broader interest;
- Impact of S&T results on DOE or other customer mission(s);
- Successful stewardship of mission-relevant research areas;
- Delivery on proposed S&T plans;
- Significant awards (Nobel Prizes, R&D 100, FLC, etc.);
- Invited talks, citations, making high-quality data available to the scientific community; and
- Development of tools and techniques that become standards or widely-used in the scientific community.

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>A+</td>
<td>In addition to satisfying the conditions for B+:</td>
</tr>
<tr>
<td></td>
<td>- There are significant research areas for which the Laboratory has exceeded the expectations of the proposed research plans in significant ways through creative, new, or unconventional methods that allow greater scientific reach than expected.</td>
</tr>
<tr>
<td></td>
<td>- S&amp;T conducted at the Laboratory has resolved one of the most critical questions in the field, or has changed the way the research community thinks about a particular field through paradigm shifting discoveries that would be considered the most influential discovery of the decade for that field.</td>
</tr>
<tr>
<td></td>
<td>- S&amp;T conducted at the Laboratory provided major advances that significantly accelerate DOE or other customer mission(s).</td>
</tr>
<tr>
<td>A</td>
<td>In addition to satisfying the conditions for B+:</td>
</tr>
<tr>
<td></td>
<td>- There are important examples where the Laboratory exceeded the expectations of the proposed research plans in significant ways through creative, new, or unconventional methods that allow greater scientific reach than expected.</td>
</tr>
<tr>
<td></td>
<td><strong>All areas</strong> of S&amp;T conducted at the Laboratory are of exceptional or outstanding merit and quality.</td>
</tr>
<tr>
<td></td>
<td>- S&amp;T conducted at the Laboratory has significant positive impact to DOE or other customer missions.</td>
</tr>
<tr>
<td>Letter Grade</td>
<td>Definition</td>
</tr>
<tr>
<td>--------------</td>
<td>------------</td>
</tr>
</tbody>
</table>
| A-           | In addition to satisfying the conditions for B+:  
- There are important examples where the Laboratory exceeded the expectations of the proposed research plans.  
- Significant areas of S&T conducted at the Laboratory are of exceptional or outstanding merit and quality.  
- S&T conducted at the Laboratory significantly impact DOE or other customer missions. |
| B+           | The Laboratory has achieved each of the following objectives:  
- The Laboratory has successfully executed proposed research plans.  
- S&T conducted at the Laboratory are of high scientific merit and quality.  
- S&T conducted at the Laboratory advance DOE or other customer missions. |
| B            | BUT the Laboratory fails to meet the conditions for B+ for at least one of the following reasons:  
- S&T conducted at the Laboratory are not uniformly of high merit and quality OR some areas of research, previously supported, have become uncompetitive OR the Laboratory does not produce sufficiently competitive proposals to receive program support at a level commensurate with its unique capabilities. |
| B-           | The Laboratory fails to meet the conditions for B+ for at least one of the following reasons:  
- The Laboratory has failed to successfully execute proposed research plans but contingencies were in place such that no funding was or will be terminated OR S&T conducted at the Laboratory does little to advance DOE or other customer missions.  
- Significant areas of S&T conducted at the Laboratory are not of high merit and quality OR some areas of research, previously supported, have become uncompetitive OR the Laboratory do not produce sufficiently competitive proposals to receive program support at a level commensurate with its unique capabilities. |
| C            | The Laboratory fails to meet the conditions for B+ for at least one of the following reasons:  
- In several significant aspects, the Laboratory failed to deliver on proposed research plans using available resources such that some funding was or will be terminated OR S&T conducted at the Laboratory failed to contribute to DOE or other customer missions.  
- Significant areas of S&T conducted at the Laboratory are of poor merit and quality OR some areas of research, previously supported, have become uncompetitive AND the Laboratory does not produce sufficiently competitive proposals to receive program support at a level commensurate with its unique capabilities. |
| D            | The Laboratory fails to meet the conditions for B+ for at least one of the following reasons:  
- Multiple program elements at the Laboratory failed to deliver on proposed research plans using available resources such that significant funding was or will be terminated.  
- Multiple significant areas of S&T conducted at the Laboratory are of poor merit and quality OR some areas of research, previously supported, have become uncompetitive AND the Laboratory does not produce sufficiently competitive proposals to receive program support at a level commensurate with its unique capabilities.  
- S&T conducted at the Laboratory failed to contribute to DOE or other customer missions. |
### FY 2018 Performance Evaluation Measurement Plan – UChicago Argonne LLC

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>F</td>
<td>The Laboratory fails to meet the conditions for B+ for at least one of the following reasons:</td>
</tr>
<tr>
<td></td>
<td>• Multiple program elements at the Laboratory failed to deliver on proposed research plans using available resources resulting in total termination of funding.</td>
</tr>
<tr>
<td></td>
<td>• Multiple significant areas of S&amp;T conducted at the Laboratory are of poor merit and quality OR some areas of research, previously supported, have become uncompetitive AND the Laboratory does not produce sufficiently competitive proposals to receive program support at a level commensurate with its unique capabilities OR the Laboratory has been found to have engaged in gross scientific incompetence and/or scientific fraud.</td>
</tr>
<tr>
<td></td>
<td>• S&amp;T conducted at the Laboratory failed to contribute to DOE or other customer missions.</td>
</tr>
</tbody>
</table>

### 1.2 Provide Quality Leadership in Science and Technology that Advances Community Goals and DOE Mission Goals.

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- Innovativeness / Novelty of research ideas put forward by the Laboratory;
- Extent to which Laboratory staff members take on substantive or formal leadership roles in their community;
- Extent to which Laboratory staff members take on formal leadership roles in DOE and SC activities; and
- Extent to which Laboratory staff members contribute thoughtful and thorough peer reviews and other research assessments as requested by DOE and SC.

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective. The evaluator(s) may consider the following as measured through progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.:

- Willingness to pursue novel approaches and/or demonstration of innovative solutions to problems;
- Willingness to take on high-risk/high-payoff/long-term research problems, evidence that previous risky decisions by the PI/research staff have proved to be correct and are paying off;
- The uniqueness and challenge of science pursued, recognition for doing the best work in the field;
- Extent and quality of collaborative efforts;
- Staff members visible in leadership positions in the scientific community;
- Involvement in professional organizations, National Academies panels and workshops;
- Effectiveness in driving the direction and setting the priorities of the community in a research field; and
- Success in competition for resources.
<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
</tr>
</thead>
</table>
| A+          | In addition to satisfying the conditions for B+, the following conditions hold for ALL Laboratory staff:  
  - Laboratory staff members have *leadership positions* in professional organizations AND in National Academy or equivalent panels to discuss and determine further research directions.  
  - Laboratory staff members have *leadership positions* in DOE sponsored workshops and strategic planning activities, for example, Laboratory staff members chair or co-chair DOE-sponsored workshops and strategic planning activities.  
  - The Laboratory program consistently produces and submits competitive proposals that challenge convention and open *significant new fields* for research that are well aligned with DOE mission needs and the Laboratory has a strong recognized role in setting priorities and driving the direction in key research areas and are internationally recognized leaders in the field.  
  - Laboratory staff hold *leadership positions* in multi-institutional research collaborations. |
| A            | In addition to satisfying the conditions for B+:  
  - Laboratory staff members have *leadership positions* in professional organizations AND staff has contributing role in National Academy or equivalent panels to discuss further research directions.  
  - Laboratory staff members have *leadership positions* in DOE sponsored workshops and strategic planning activities.  
  - The Laboratory program consistently produces and submits competitive proposals that challenge convention and open *significant new fields* for research that are well aligned with DOE mission needs and the Laboratory has a strong recognized role in setting priorities and driving the direction in key research areas.  
  - Laboratory staff hold *leadership positions* in multi-institutional research collaborations. |
| A-           | In addition to satisfying the conditions for B+:  
  - Laboratory staff members have *leadership positions* in professional organizations OR staff has contributing role in National Academy or equivalent panels to discuss further research directions.  
  - Laboratory staff members have *leadership positions* in DOE sponsored workshops and strategic planning activities.  
  - The Laboratory program consistently submits competitive proposals that challenge convention and open *significant new avenues* for research that are well aligned with DOE mission needs.  
  - Laboratory staff hold *leadership positions* in multi-institutional research collaborations. |
<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
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</table>
| B+           | The Laboratory has achieved *each* of the following objectives:  
  - Laboratory staff members are *active participants* in professional organizations, committees, and activities, and take on leadership responsibilities commensurate with experience and expertise.  
  - Laboratory staff members are *active participants* in DOE sponsored workshops and strategic planning activities.  
  - Laboratory staff members contribute thoughtful and thorough peer review in a timely manner, when requested by DOE.  
  - The Laboratory program consistently provides competitive proposals that challenge convention and open new avenues for research that are well aligned with DOE mission needs.  
  - Laboratory staff are *active participants* in multi-institutional research collaborations.  

BUT the Laboratory fails to meet the conditions for B+ for *at least one* of the following reasons:  
  - Although *regular participants* in professional organizations, committees, and activities, *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff*.  
  - Although *regular participants* in DOE sponsored workshops and strategic planning activities, *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff*.  
  - Although *active members of* multi-institutional research collaborations, *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff*.  

| B            | Laboratory staff members contribute thoughtful and thorough peer review in a timely manner, when requested by DOE.  
  - The Laboratory program consistently provides competitive proposals that challenge convention and open new avenues for research that are well aligned with DOE mission needs.  

BUT the Laboratory fails to meet the conditions for B+ for *at least one* of the following reasons:  
  - The Laboratory program submits competitive proposals but these either lack innovation or are not well aligned with DOE mission needs.  
  - Laboratory staff are *infrequent participants* in professional organizations, committees, and activities, *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff*.  
  - Laboratory staff are *infrequent participants* in DOE sponsored workshops and strategic planning activities, *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff*.  
  - Although *active members of* multi-institutional research collaborations, *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff*.  

| B-           | Laboratory staff members contribute thoughtful and thorough peer review in a timely manner, when requested by DOE.  

BUT the Laboratory fails to meet the conditions for B+ for *at least one* of the following reasons:  
  - The Laboratory program submits competitive proposals but these either lack innovation or are not well aligned with DOE mission needs.  
  - Laboratory staff are *infrequent participants* in professional organizations, committees, and activities, *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff*.  
  - Laboratory staff are *infrequent participants* in DOE sponsored workshops and strategic planning activities, *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff*.  
  - Although *active members of* multi-institutional research collaborations, *the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff*.  

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
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</thead>
</table>
| C            | The Laboratory fails to meet the conditions for B+ for at least one of the following reasons:  
• Laboratory staff members do not reliably contribute thoughtful and thorough peer review in a timely manner, when requested by DOE.  
• Some areas of research, previously supported, are no longer competitive.  
• Laboratory staff members are infrequent participants in professional organizations, committees, and activities, AND the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.  
• Laboratory staff members are infrequent participants in DOE sponsored workshops and strategic planning activities, and the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.  
• Although Laboratory staff members are active members of multi-institutional research collaborations, the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff. |
| D            | The Laboratory fails to meet the conditions for B+ because the Laboratory staff are working on problems that are no longer at the forefront of science and are considered mundane. |
| F            | Review has found the Laboratory staff to be guilty of gross scientific incompetence and/or scientific fraud. |

**No Notable Outcome(s):** Goal 1.0 - Mission Accomplishment
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<thead>
<tr>
<th>Program Office2</th>
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<th>Numerical Score</th>
<th>Weight</th>
<th>Overall Score</th>
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<tr>
<td></td>
<td>1.2 Leadership</td>
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<tr>
<td>Office of Basic Energy Sciences</td>
<td>1.1 Impact</td>
<td>50%</td>
<td>Overall BES Total</td>
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<td></td>
<td>1.2 Leadership</td>
<td>50%</td>
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<tr>
<td>Office of Biological and Environmental Research</td>
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<td></td>
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<td></td>
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<td></td>
<td>1.2 Leadership</td>
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<td></td>
<td>1.2 Leadership</td>
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<td></td>
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### Office of Workforce Development for Teachers and Scientists

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<td>Overall NRC Total</td>
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<td><strong>Department of Homeland Security</strong></td>
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<tr>
<td>Office of Workforce Development for Teachers and Scientists</td>
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<tr>
<td>Office of Fossil Energy</td>
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<tr>
<td>National Institutes of Health</td>
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**Performance Goal 1.0 Total**

Table 1.2 – Overall Performance Goal 1.0 Score Development

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20
Table 1.3 – Goal 1.0 Final Letter Grade

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<tr>
<th>Total Score</th>
<th>4.3-4.1</th>
<th>4.0-3.8</th>
<th>3.7-3.5</th>
<th>3.4-3.1</th>
<th>3.0-2.8</th>
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<th>2.4-2.1</th>
<th>2.0-1.8</th>
<th>1.7-1.1</th>
<th>1.0-0.8</th>
<th>0.7-0</th>
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<tr>
<td>Final Grade</td>
<td>A+</td>
<td>A</td>
<td>A-</td>
<td>B+</td>
<td>B</td>
<td>B-</td>
<td>C+</td>
<td>C</td>
<td>C-</td>
<td>D</td>
<td>F</td>
</tr>
</tbody>
</table>

2 A complete listing of the Objectives weightings under the S&T Goals for the SC Programs is provided within Attachment I to this plan.

3 The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual cost for FY 2018.

GOAL 2.0 Provide for Efficient and Effective Design, Fabrication, Construction and Operations of Research Facilities

The Laboratory provides effective and efficient strategic planning; fabrication, construction and/or operations of Laboratory research facilities; and are responsive to the user community.

The weight of this Goal is TDB%.

The Provide for Efficient and Effective Design, Fabrication, Construction and Operations of Research Facilities Goal shall measure the overall effectiveness and performance of the Contractor in planning for and delivering leading-edge specialty research and/or user facilities to ensure the required capabilities are present to meet today’s and tomorrow’s complex challenges. It also measures the Contractor’s innovative operational and programmatic means for implementation of systems that ensures the availability, reliability, and efficiency of these facilities; and the appropriate balance between R&D and user support.

Each Objective within this Goal is to be assigned the appropriate numerical score by the Office of Science Program Office as identified below. The overall Goal score from each Program Office is computed by multiplying numerical scores earned by the weight of each Objective, and summing them (see Table 2.1). Final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual cost for FY 2018.

- Office of Advanced Scientific Computing Research (ASCR)
- Office of Basic Energy Sciences (BES)
- Office of Biological and Environmental Research (BER)
- Office of Nuclear Physics (NP)

The overall performance score and grade for this Goal will be determined by multiplying the overall score assigned by each of the offices identified above by the weightings identified for each and then summing them (see Table 2.2 below). The overall score earned is then compared to Table 2.3 to determine the overall letter grade for this Goal. Individual Program Office weightings for each of the Objectives identified below are provided within Table 2.1. The Contractor’s success in meeting each Objective shall be determined based on the Contractor’s performance as viewed by DOE HQ Office of Science’s (SC) Program Offices for which the Laboratory conducts work. Should one or more of the HQ Program Offices choose not to provide an evaluation for this Goal and its corresponding Objectives the weighting for the remaining HQ Program Offices shall be recalculated based on their percentage of cost for FY 2018 as compared to the total cost for those remaining HQ Program Offices.
**Objectives**

2.1 **Provide Effective Facility Design(s) as Required to Support Laboratory Programs (i.e., activities leading up to CD-2)**

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The Laboratory’s delivery of accurate and timely information required to carry out the critical decision and budget formulation process;
- The Laboratory’s ability to meet the intent of DOE Order 413.3, Program and Project Management for the Acquisition of Capital Assets;
- The extent to which the Laboratory appropriately assesses risks and contingency needs; and
- The extent to which the Laboratory is effective in its unique management role and partnership with HQ.

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective. The evaluator(s) may consider the following as measured through progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.

- The quality of the scientific justification for proposed facilities resulting from preconceptual R&D;
- The technical quality of conceptual and preliminary designs and the credibility of the associated cost estimates;
- The credibility of plans for the full life cycle of proposed facilities including financing options;
- The leveraging of existing facilities and capabilities of the DOE Laboratory complex in plans for proposed facilities; and
- The novelty and potential impact of new technologies embodied in proposed facilities.

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<tr>
<th>Letter Grade</th>
<th>Definition</th>
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</table>
| A+           | In addition to satisfying all conditions for B+; the Laboratory *exceeds expectations* in *all* of these categories:  
- The Laboratory is recognized by the research community as the leader for making the science case for the acquisition.  
- The Laboratory takes the initiative to demonstrate and thoroughly document the potential for transformational scientific advancement.  
- Approaches proposed by the Laboratory are widely regarded as innovative, novel, comprehensive, and potentially cost-effective.  
- Reviews repeatedly confirm strong potential for scientific discovery in areas that support the Department’s mission, and potential to change a discipline or research area’s direction.  
- The Laboratory identifies, analyzes and champions novel approaches for acquiring the new capability, including leveraging or extending the capability of existing facilities and financing and these efforts result in significant cost estimate and/or risk reductions without loss or, or while enhancing capability. |
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<tr>
<th>Letter Grade</th>
<th>Definition</th>
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</table>
| A            | In addition to satisfying all conditions for B+, all of the following conditions are also met:  
• The Laboratory is recognized by the research community as a leader for making the science case for the acquisition.  
• The Laboratory takes the initiative to demonstrate the potential for revolutionary scientific advancement working in partnership with HQ.  
• The Laboratory identifies, analyzes, and champions, to HQ and Site office, novel approaches for acquiring the new capability, including leveraging or extending the capability of existing facilities and financing. |
| A-           | In addition to satisfying all conditions for B+, all of the following conditions are also met:  
• The approaches proposed by the Laboratory are widely regarded as innovative, novel, comprehensive, and potentially cost-effective.  
• Reviews repeatedly confirm potential for scientific discovery in areas that support the Department’s mission, and potential to change a discipline or research area’s direction. |
| B+           | The Laboratory has achieved each of the following objectives:  
• The Laboratory displays leadership and commitment in the development of quality analyses, preliminary designs, and related documentation to support the approval of the mission need (CD-0), the alternative selection and cost range (CD-1) and the performance baseline (CD-2).  
• Documentation requested by the programs is provided in a timely and thorough manner.  
• The Laboratory keeps DOE apprised of the status, near-term plans and the resolution of problems on a regular basis; anticipates emerging issues that could impact plans and takes the initiative to inform DOE of possible consequences.  
• The Laboratory solves problems and addresses issues to avoid adverse impacts to the project. |
| B            | The Laboratory fails to meet expectations in one of the areas listed under B+. |
| B-           | The Laboratory fails to meet expectations in several of the areas listed under B+. |
| C            | The Laboratory fails to meet the expectations in several of the areas listed under B+  
AND the required analyses and documentation developed by the Laboratory are EITHER not innovative, OR reflect a lack of commitment and leadership. |
| D            | The Laboratory fails to meet the expectations in several of the areas listed under B+  
AND the Laboratory fails to provide a compelling justification for the acquisition. |
| F            | The Laboratory fails to meet the expectations in several of the areas listed under B+  
AND the approaches proposed by the Laboratory are based on fraudulent assumptions; the science case is weak to non-existent, and the business case is seriously flawed. |

2.2 Provide for the Effective and Efficient Construction of Facilities and/or Fabrication of Components (execution phase, post CD-2 to CD-4)

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

• The Laboratory’s adherence to DOE Order 413.3 Project Management for the Acquisition of Capital Assets;
• Successful fabrication of facility components by the Laboratory;
• The Laboratory’s effectiveness in meeting construction schedule and budget;
• The quality of key Laboratory staff overseeing the project(s); and
• The extent to which the Laboratory maintains open, effective, and timely communication with HQ regarding issues and risks.

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<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
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</table>
| A+           | In addition to satisfying all conditions for A:  
  • There is high confidence throughout the execution phase that the project will be completed *significantly* under budget and/or ahead of schedule while meeting or exceeding all performance baselines. |
| A            | In addition to satisfying all conditions for B+:  
  • The Laboratory has identified and implemented practices that would allow the project scope to be *significantly expanded* if such were desirable, without impact on baseline cost or schedule.  
  • The Laboratory *always* provides *exemplary* project status reports on time to DOE and takes the initiative to communicate emerging problems or issues.  
  • Reviews identify environment, safety and health practices to be *exemplary*.  
  • There is high confidence throughout the execution phase that the project will meet its cost/schedule performance baseline. |
| A-           | In addition to satisfying all conditions for B+:  
  • The Laboratory has identified practices that would allow for the project scope to be expanded if such were desirable, without impact on baseline cost or schedule.  
  • Problems are identified and corrected by the Laboratory promptly, with no impact on scope, cost or schedule.  
  • The Laboratory provides particularly useful project status reports on time to DOE and regularly takes the initiative to communicate emerging problems or issues.  
  • Reviews identify environment, safety and health practices to exceed expectations.  
  • There is high confidence throughout the execution phase that the project will meet its cost/schedule performance baseline. |
| B+           | The Laboratory has achieved *each* of the following objectives:  
  • The project meets CD-2 performance measures.  
  • The Laboratory provides sustained leadership and commitment to environment, safety and health.  
  • Reviews regularly recognize the Laboratory for being proactive in the management of the execution phase of the project.  
  • To a large extent, problems are identified and corrected by the Laboratory with little, or no impact on scope, cost or schedule.  
  • DOE is kept informed of project status on a regular basis; reviews regularly indicate project is expected to meet its cost/schedule performance baseline. |
| B            | The Laboratory provides sustained leadership and commitment to environment, safety and health  
  BUT:  
  • The project fails to meet expectations in *one* of the remaining areas listed under B+. |
| B-           | The Laboratory provides sustained leadership and commitment to environment, safety and health  
  BUT:  
  • The project fails to meet expectations in *several* of the areas listed under B+. |
<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>C</td>
<td>The Laboratory provides sustained leadership and commitment to environment, safety and health BUT: The project fails to meet expectations in <em>several</em> of the areas listed under B+ AND: • Reviews indicate project remains at risk of breaching its cost/schedule performance baseline. • Reports to DOE can vary in degree of completeness.</td>
</tr>
<tr>
<td>D</td>
<td>The project fails to meet conditions for B+ in <em>at least one</em> of the following areas: • Reviews indicate project is likely to breach its cost/schedule performance baseline. • Laboratory commitment to environment, safety and health issues is inadequate. • Reports to DOE are largely incomplete; Laboratory commitment to the project has subsided.</td>
</tr>
<tr>
<td>F</td>
<td>The project fails to meet conditions for B+ in <em>at least one</em> of the following areas: • Laboratory falsifies data during project execution phase. • Shows disdain for executing the project within minimal standards for environment, safety or health. • Fails to keep DOE informed of project status. • Recent reviews indicate that the project is expected to breach its cost/schedule performance baseline.</td>
</tr>
</tbody>
</table>

2.3 **Provide Efficient and Effective Operation of Facilities**

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The availability, reliability, performance, and efficiency of Laboratory facility(ies);
- The degree to which the facility is optimally arranged to support the user community;
- The extent to which Laboratory R&D is conducted to develop/expand the capabilities of the facility(ies);
- The Laboratory’s effectiveness in balancing resources between facility R&D and user support; and
- The quality of the process used to allocate facility time to users.

<table>
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<tr>
<td>A+</td>
<td>In addition to satisfying all conditions for B+, <em>all</em> of the following conditions are also met: • Performance of the facility <em>exceeds</em> expectations as defined before the start of the year in all of these categories: cost of operations, users served, availability, and capability. • The schedule and the costs associated with the ramp-up to steady state operations are <em>significantly less</em> than planned and are acknowledged to be ‘leadership caliber’ by reviews. • Data on environment, safety, and health continues to be exemplary and widely regarded as among the ‘best in class’. • The Laboratory took extraordinary means to deliver an extraordinary result for the users and the program in the performance/review period.</td>
</tr>
<tr>
<td>Letter Grade</td>
<td>Definition</td>
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</table>
| A           | In addition to satisfying all conditions for B+, all of the following conditions are also met:  
- Performance of the facility *exceeds* expectations as defined before the start of the year in most of these categories: cost of operations, users served, availability, and capability.  
- The schedule and the costs associated with the ramp-up to steady state operations are *less* than planned and are acknowledged to be ‘leadership caliber’ by reviews.  
- Data on environment, safety, and health continues to be *exemplary* and widely regarded as among the ‘best in class’. |
| A-          | In addition to satisfying all conditions for B+, one of the following conditions is met:  
- Performance of the facility *exceeds* expectations as defined before the start of the year in any of these categories: cost of operations, users served, availability, and capability.  
- The schedule and the costs associated with the ramp-up to steady state operations are *less* than planned and are acknowledged to be among the best by reviews. |
| B+          | The Laboratory has achieved *each* of the following objectives:  
- Performance of the facility *meets* expectations as defined before the start of the year in all of these categories: cost of operations, users served, availability, capability (for example, beam delivery, luminosity, peak performance, etc.).  
- The schedule and the costs associated with the ramp-up to steady state operations occur as planned.  
- Data on environment, safety, and health continues to be very good as compared with other projects in the DOE.  
- User surveys meet program expectations and reflect that the Laboratory is responsive to user needs. |
| B           | The project fails to meet expectations in *one* of the areas listed under B+. |
| B-          | The project fails to meet expectations in *more than one* of the areas listed under B+. |
| C           | Performance of the facility fails to meet expectations in *many* of the areas listed under B+, for example:  
- The cost of operations is unexpectedly high and availability of the facility is unexpectedly low, the number of users is unexpectedly low, capability is well below expectations.  
- The facility operates at steady state, on cost and on schedule, but the reliability of performance is somewhat below planned values, OR the facility operates at steady state, but the associated schedule and costs exceed planned values.  
- Commitment to environment, safety, and health is satisfactory. |
| D           | Performance of the facility fails to meet expectations in *many* of the areas listed under B+, for example:  
- The cost of operations is unexpectedly high and availability of the facility is unexpectedly low; capability is well below expectations.  
- The facility operates somewhat below steady state, on cost and on schedule, and the reliability of performance is somewhat below planned values, OR the facility operates at steady state, but the associated schedule and costs exceed planned values.  
- Commitment to environment, safety, and health is inadequate. |
| F           | - The facility fails to operate; the facility operates well below steady state AND/OR the reliability of the performance is well below planned values.  
- Laboratory commitment to environment, safety, and health issues is inadequate. |
2.4 Utilization of Facility(ies) to Provide Impactful S&T Results and Benefits to External User Communities

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The extent to which the facility is being used to perform influential science;
- The Laboratory’s efforts to take full advantage of the facility to generate impactful S&T results;
- The extent to which the facility is strengthened by a resident Laboratory research community that pushes the envelope of what the facility can do and/or are among the scientific leaders of the community;
- The Laboratory’s ability to appropriately balance access by internal and external user communities; and
- The extent to which there is a healthy program of outreach to the scientific community.

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
</tr>
</thead>
</table>
| A+           | In addition to meeting all measures under A:  
- The Laboratory took extraordinary means to deliver an extraordinary result for a new user community. |
| A            | In addition to satisfying all conditions for B+, all of the following conditions are met:  
- An aggressive outreach programs is in place and has been documented as attracting new communities to the facility.  
- Reviews consistently find that the facility capability or scope of research potential significantly exceeds expectations for example, due to newly discovered capabilities or exposure to new research communities; OR reviews find that multiple disciplines are using the facility in new and novel ways that the facility is being used to pursue influential science. |
| A-           | In addition to satisfying all conditions for B+, all of the following conditions are met:  
- A strong outreach program is in place.  
- Reviews find that the facility capability or scope of research potential exceeds expectations; for example, due to newly discovered capabilities or exposure to new research communities OR reviews document how multiple disciplines are using the facility in new and novel ways and/or that the facility is being used to pursue important science. |
| B+           | The Laboratory has achieved each of the following objectives:  
- Reviews find / validate that the facility is being used for influential science.  
- The scope of facility capabilities is challenged and broadened by resident users.  
- The Laboratory effectively manages user allocations.  
- The Laboratory effectively maintains the facility to required performance standards (for example: runtime, luminosity, etc.).  
- A healthy outreach program is in place. |
| B            | The Laboratory fails to meet expectations in one of the areas listed under B+. |
| B-           | The Laboratory fails to meet expectations in several of the areas listed under B+. |
| C            | The Laboratory fails to meet expectations in many of the areas listed under B+. |
| D            | Reviews find that there are few facility users, few of whom are using the facility in novel ways to produce impactful science; research base is very thin. |
| F            | Laboratory staff does not possess capabilities to operate and/or use the facility adequately. |
Notable Outcome: Goal 2.0 - Design, Fabrication, Construction and Operation of Research Facilities

- **BES**: Execute the assigned APS-U project scope in compliance with the technical performance specifications and within the established DOE performance goals for cost and schedule. Performance will be assessed based on the work planned and accomplished during FY2018, not on the cumulative performance of the project. (Objective 2.1)

<table>
<thead>
<tr>
<th>Program Office</th>
<th>Letter Grade</th>
<th>Numerical Score</th>
<th>Weight</th>
<th>Overall Score</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Office of Advanced Scientific Research</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.1 Provide Effective Facility Design(s)</td>
<td></td>
<td></td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>2.2 Provide for the Effective and Efficient Construction of Facilities and/or Fabrication of Components</td>
<td></td>
<td></td>
<td>30%</td>
<td></td>
</tr>
<tr>
<td>2.3 Provide Efficient and Effective Operation of Facilities</td>
<td></td>
<td></td>
<td>40%</td>
<td></td>
</tr>
<tr>
<td>2.4 Utilization of Facility(ies) to Provide Impactful S&amp;T Results and Benefits to External User Communities</td>
<td></td>
<td></td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td><strong>Overall ASCR Total</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td><strong>Office of Basic Energy Sciences</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.1 Provide Effective Facility Design(s)</td>
<td></td>
<td></td>
<td>35%</td>
<td></td>
</tr>
<tr>
<td>2.2 Provide for the Effective and Efficient Construction of Facilities and/or Fabrication of Components</td>
<td></td>
<td></td>
<td>0%</td>
<td></td>
</tr>
<tr>
<td>2.3 Provide Efficient and Effective Operation of Facilities</td>
<td></td>
<td></td>
<td>35%</td>
<td></td>
</tr>
<tr>
<td>2.4 Utilization of Facility(ies) to Provide Impactful S&amp;T Results and Benefits to External User Communities</td>
<td></td>
<td></td>
<td>30%</td>
<td></td>
</tr>
<tr>
<td><strong>Overall BES Total</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Office of Biological and Environmental Research</strong></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>2.1 Provide Effective Facility Design(s)</td>
<td></td>
<td></td>
<td>0%</td>
<td></td>
</tr>
<tr>
<td>2.2 Provide for the Effective and Efficient Construction of Facilities and/or Fabrication of Components</td>
<td></td>
<td></td>
<td>0%</td>
<td></td>
</tr>
<tr>
<td>2.3 Provide Efficient and Effective Operation of Facilities</td>
<td></td>
<td></td>
<td>90%</td>
<td></td>
</tr>
<tr>
<td>2.4 Utilization of Facility(ies) to Provide Impactful S&amp;T Results and Benefits to External User Communities</td>
<td></td>
<td></td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td><strong>Overall BER Total</strong></td>
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<tr>
<td><strong>Office of Nuclear Physics</strong></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>2.1 Provide Effective Facility Design(s)</td>
<td></td>
<td></td>
<td>0%</td>
<td></td>
</tr>
<tr>
<td>2.2 Provide for the Effective and Efficient Construction of Facilities and/or Fabrication of Components</td>
<td></td>
<td></td>
<td>0%</td>
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</tr>
<tr>
<td>2.3 Provide Efficient and Effective Operation of Facilities</td>
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<td></td>
<td>85%</td>
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</tr>
<tr>
<td>2.4 Utilization of Facility(ies) to Provide Impactful S&amp;T Results and Benefits to External User Communities</td>
<td></td>
<td></td>
<td>15%</td>
<td></td>
</tr>
<tr>
<td><strong>Overall NP Total</strong></td>
<td></td>
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</tr>
</tbody>
</table>

Table 2.1 – Program Performance Goal 2.0 Score Development
### Program Office

<table>
<thead>
<tr>
<th>Program Office</th>
<th>Letter Grade</th>
<th>Numerical Score</th>
<th>Funding Weight (cost)</th>
<th>Overall Weighted Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office of Advanced Scientific Research</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Office of Basic Energy Sciences</td>
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<td></td>
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<td></td>
</tr>
<tr>
<td>Office of Biological and Environmental Research</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Office of Nuclear Physics</td>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Performance Goal 2.0 Total**

Table 2.2 – Overall Performance Goal 2.0 Score Development

<table>
<thead>
<tr>
<th>Total Score</th>
<th>4.3-4.1</th>
<th>4.0-3.8</th>
<th>3.7-3.5</th>
<th>3.4-3.1</th>
<th>3.0-2.8</th>
<th>2.7-2.5</th>
<th>2.4-2.1</th>
<th>2.0-1.8</th>
<th>1.7-1.1</th>
<th>1.0-0.8</th>
<th>0.7-0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final Grade</td>
<td>A+</td>
<td>A</td>
<td>A-</td>
<td>B+</td>
<td>B</td>
<td>B-</td>
<td>C</td>
<td>C</td>
<td>C-</td>
<td>D</td>
<td>F</td>
</tr>
</tbody>
</table>

Table 2.3 – Goal 2.0 Final Letter Grade

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4. A complete listing of the Objectives weightings under the S&T Goals for the SC Programs is provided within Attachment I to this plan.

5. The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual cost for FY 2018.
GOAL 3.0 Provide Effective and Efficient Science and Technology Program Management

The Laboratory provides effective program vision and leadership; strategic planning and development of initiatives; recruits and retains a quality scientific workforce; and provides outstanding research processes, which improve research productivity.

The weight of this Goal is TDB%.

The Provide Effective and Efficient Science and Technology Program Management Goal shall measure the Contractor’s overall management in executing S&T programs. Dimensions of program management covered include: 1) providing key competencies to support research programs to include key staffing requirements; 2) providing quality research plans that take into account technical risks, identify actions to mitigate risks; and 3) maintaining effective communications with customers to include providing quality responses to customer needs.

Each Objective within this Goal is to be assigned the appropriate numerical score by the Office of Science Program Office as identified below. The overall Goal score from each Program Office is computed by multiplying numerical scores earned by the weight of each Objective, and summing them (see Table 3.1). The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual cost for FY 2018.

- Office of Advanced Scientific Computing Research (ASCR)
- Office of Basic Energy Sciences (BES)
- Office of Biological and Environmental Research (BER)
- Office of Defense Nuclear Nonproliferation (DNN)
- Office of Electricity Delivery and Energy Reliability (OE)
- Office of Energy Efficiency and Renewable Energy (EERE)
- Office of Fossil Energy (FE)
- Office of High Energy Physics (HEP)
- Office of Intelligence (IN)
- Office of Nuclear Physics (NP)
- Office of Nuclear Energy (NE)
- Office of Workforce Development for Teachers and Scientists (WDTS)
- Department of Homeland Security (DHS)
- National Institutes of Health (NIH)
- Nuclear Regulatory Commission (NRC)

The overall performance score and grade for this Goal will be determined by multiplying the overall score assigned by each of the offices identified above by the weightings identified for each and then summing them (see Table 3.2 below). The overall score earned is then compared to Table 3.3 to determine the overall letter grade for this Goal. The Contractor’s success in meeting each Objective shall be determined based on the Contractor’s performance as viewed by the Office of Science, other cognizant HQ Program Offices, and other customers for which the Laboratory conducts work. Should one or more of the HQ Program Offices choose not to provide an evaluation for this Goal and its corresponding Objectives the weighting for the remaining HQ Program Offices shall be recalculated based on their percentage of cost for FY 2018 as compared to the total cost for those remaining HQ Program Offices.
Objectives

3.1 Provide Effective and Efficient Strategic Planning and Stewardship of Scientific Capabilities and Program Vision

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The quality of the Laboratory’s strategic plan;
- The extent to which the Laboratory shows strategic vision for research;
- The extent to which programs of research take advantage of Laboratory capabilities—research programs are more than the sum of their individual project parts;
- The extent to which the Laboratory undertakes research for which it is uniquely qualified;
- The extent to which lab plans are aligned with DOE mission goals;
- The extent to which the Laboratory programs are balanced between high-/low- risk research for a sustainable program; and
- The extent to which the Laboratory is able to retain and recruit staff for a sustainable program.

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective. The evaluator(s) may consider the following as measured through progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.

- Articulation of scientific vision;
- Development and maintenance of core competencies;
- Ability to attract and retain highly qualified staff;
- Efficiency and effectiveness of joint planning (e.g., workshops) with outside community;
- Creativity and robustness of ideas for new facilities and research programs;
- Willingness to take on high-risk/high-payoff/long-term research problems, evidence that the Laboratory “guessed right” in that previous risky decisions proved to be correct and are paying off; and
- The depth and breadth of Laboratory research portfolio and its potential for growth.

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
</tr>
</thead>
</table>
| A+           | In addition to satisfying the conditions for B+, the execution of the Laboratory’s strategic plan has enabled the Laboratory to achieve each of the following:  
  - Most of the Laboratory’s core competencies are recognized as world leading.  
  - The Laboratory has attracted and retained world-leading scientists in most programs.  
  - There is evidence that previous decisions to pursue high-risk/high-payoff research proved to be correct and are paying off.  
  - The Laboratory has succeeded in developing new core competencies of outstanding quality in areas both exploratory, high-risk research and research that is vital to the DOE/SC missions. |
<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
</tr>
</thead>
</table>
| **A**       | In addition to satisfying the conditions for B+, the execution of the Laboratory’s strategic plan has enabled the Laboratory to achieve the following:  
  - Several of the Laboratory’s core competencies are recognized as world leading.  
  - The Laboratory has attracted and retained world-leading scientists in several programs.  
  - There is evidence that previous decisions to pursue high-risk/high-payoff research proved to be correct and are paying off.  
  - The Laboratory has succeeded in developing new core competencies of high quality in areas both exploratory, high-risk research and research that is vital to the DOE/SC missions. |
| **A-**      | In addition to satisfying the conditions for B+, the execution of the Laboratory’s strategic plan has enabled the Laboratory to achieve at least one of the following:  
  - At least one of the Laboratory’s core competencies is recognized as world-leading.  
  - The Laboratory has attracted and retained world-leading scientists in one or more programs.  
  - The Laboratory has a coherent plan for addressing future workforce challenges. |
| **B+**      | The execution of the Laboratory’s strategic plan has enabled the Laboratory to achieve each of the following objectives:  
  - The Laboratory has articulated a coherent and compelling strategic plan that has been developed with input from external research communities and headquarters guidance which, where appropriate, includes a coherent plan for building smaller research programs into new core competencies; and reallocates resources away from less effective programs.  
  - The Laboratory has demonstrated the ability to attract and retain professional scientific staff in support of its strategic vision.  
  - The portfolio of Laboratory research balances the needs for both high-risk/high-payoff research and stewardship of mission-critical research.  
  - The Laboratory’s research portfolio takes advantage of unique capabilities at the Laboratory.  
  - The Laboratory’s research portfolio includes activities for which the Laboratory is uniquely capable. |
| **B**       | The Laboratory fails to satisfy one of the conditions for B+, for example:  
  - The Laboratory’s strategic plan is only partially coherent and is not entirely well-connected with external communities.  
  - The portfolio of Laboratory research does not appropriately balance high-risk/high-payoff research and stewardship of mission-critical research.  
  - The Laboratory has developed and maintained some, but not all, of its core competencies.  
  - The plan to attract and retain professional scientific staff is lacking strategic vision. |
| **B-**      | The Laboratory fails to satisfy several of the conditions for B+, including at least one of the following:  
  - Weak programmatic vision insufficiently connected with external communities.  
  - Development and maintenance of only a few core competencies.  
  - Little attention to maintaining the correct balance between high-risk and mission-critical research.  
  - Inability to attract and retain talented scientists in some programs. |
<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
</tr>
</thead>
</table>
| C            | The Laboratory fails to satisfy *several* of the conditions for B+, including *at least one* of the following reasons:  
- The Laboratory’s strategic plan lacks strategic vision and lacks appropriate coordination with appropriate stakeholders including external research groups.  
- The Laboratory’s strategic plan does not provide for sufficient maintenance of core competencies.  
- Plan to attract and retain professional scientific staff is unlikely to be successful or does not focus on strategic capabilities. |
| D            | The Laboratory fails to satisfy *several* of the conditions for B+, and specifically:  
- The Laboratory has demonstrated little effort in developing a strategic plan.  
- The Laboratory has done little to develop and maintain core competencies.  
- The Laboratory has had minimal success in attracting and retaining professional scientific staff. |
| F            | The Laboratory has:  
- Made limited or ineffective attempts to develop a strategic plan.  
- Not demonstrated the ability to develop and maintain core competencies, has failed to propose high-risk/high-reward research and has failed to steward mission-critical areas.  
- Failed to attract even reasonably competent scientists and technical staff. |

### 3.2 Provide Effective and Efficient Science and Technology Project/Program/Facilities Management

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The Laboratory’s management of R&D programs and facilities according to proposed plans;  
- The extent to which the Laboratory’s management of projects/programs/facilities supports the Laboratory strategic plan;  
- Adequacy of the Laboratory’s consideration of technical risks;  
- The extent to which the Laboratory is successful in identifying/avoiding technical problems;  
- Effectiveness in leveraging across multiple areas of research and between research and facility capabilities;  
- The extent to which the Laboratory demonstrates a willingness to make tough decisions (i.e., cut programs with sub-critical mass of expertise, divert resources to more promising areas, etc.); and  
- The use of LDRD and other Laboratory investments and overhead funds to improve the competitiveness of the Laboratory.

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective.  The evaluator(s) may consider the following as measured through progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.

- Laboratory plans that are reviewed by experts outside of lab management and/or include broadly-based input from within the Laboratory.
<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
</tr>
</thead>
</table>
| A+           | In addition to meeting the *all* expectations under A:  
|              | • The Laboratory has taken extraordinary measures to deliver an extraordinary result of critical importance to DOE missions, which could include the delivery of a critical technology or insight in response to a National emergency. |
| A            | In addition to satisfying the conditions for B+:  
|              | • The Laboratory’s implementation of project/program/facility plans has led directly to effective R&D programs/facility operations that exceed program expectations in *several* programmatic areas. Examples are listed under A-. |
| A-           | In addition to satisfying the conditions for B+:  
|              | • The Laboratory’s implementation of project/program/facility plans has led directly to effective R&D programs/facility operations that exceed program expectations in *more than one* programmatic area. Examples of performance that exceeds expectations include:  
|              | • The Laboratory’s implementation of project/program/facility plans has led directly to significant cost savings and/or significantly higher productivity than expected.  
|              | • Project/program/facility plans prove to be robust against changing scientific and fiscal conditions through contingency planning.  
|              | • The Laboratory has demonstrated creativity and forceful leadership in development and/or proactive management of its project/program/facility plans to reduce or eliminate risk.  
|              | • The Laboratory’s proposals for new initiatives are funded through reallocation of resources from less effective programs.  
|              | • Research plans and management actions are proactive, not reactive, as evidenced by making hard decisions and taking strong actions; and  
|              | • Management is prepared for budget fluctuations and changes in DOE program priorities – multiple contingencies are planned for; and  
|              | • LDRD investments, overhead funds, and other Laboratory funds are used to strengthen lab plans and fill critical gaps in the Laboratory portfolio enabling it to respond to future DOE initiatives and/or national emergencies. |
| B+           | The Laboratory has achieved *each* of the following objectives:  
|              | • Project/program/facility plans exist for all major projects/programs/facilities.  
|              | • Project/program/facility plans are consistent with known budgets, are based on reasonable assessments of technical risk, are well-aligned with DOE interests, provide sufficient flexibility to respond to unforeseen directives and opportunities, and effectively leverage other Laboratory resources and expertise.  
|              | • The Laboratory has implemented the project/program/facility plans and has effective methods of tracking progress.  
|              | • The Laboratory demonstrates willingness to make tough decisions (i.e., cut programs with sub-critical mass of expertise, divert resources to more promising areas, etc.).  
|              | • The Laboratory’s implementation of project/program/facility plans has led directly to effective R&D programs/facility operations.  
|              | • LDRD investments and other overhead funds are managed appropriately. |
| B            | • Project/program/facility plans exist for all major projects/programs/facilities.  
|              | • The Laboratory has implemented the project/program/facility plans.  
|              | **BUT** the Laboratory fails to meet *at least one* of the conditions for B+. |
| B-           | • Project/program/facility plans exist for all major projects/programs/facilities.  
|              | • The Laboratory has implemented the project/program/facility plans.  
|              | **BUT** the Laboratory fails to meet *several* of the conditions for B+. |
### Letter Grade Definition

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>C</td>
<td>• Project/program/facility plans exist for most major projects/programs/facilities. BUT the Laboratory has failed to implement the project/program/facility plans AND the Laboratory fails to meet several of the conditions for B+.</td>
</tr>
<tr>
<td>D</td>
<td>• Project/program/facility plans do not exist for a significant fraction of the Laboratory’s major projects/programs/facilities; OR • Significant work at the Laboratory is not in alignment with the project/program/facility plans.</td>
</tr>
<tr>
<td>F</td>
<td>The Laboratory has failed to conduct project/program/facility planning activities.</td>
</tr>
</tbody>
</table>

### 3.3 Provide Efficient and Effective Communications and Responsiveness to Headquarters Needs

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The quality, accuracy and timeliness of the Laboratory’s response to customer requests for information;
- The extent to which the Laboratory provides point-of-contact resources and maintains effective internal communications hierarchies to facilitate efficient determination of the appropriate point-of-contact for a given issue or program element;
- The effectiveness of the Laboratory’s communications and depth of responsiveness under extraordinary or critical circumstances; and
- The effectiveness of Laboratory management in accentuating the importance of communication and responsiveness.

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>A+</td>
<td>In addition to meeting the all expectations under A: • The Laboratory’s effective communication and extraordinary responsiveness in the face of extreme situations or a national emergency had a materially positive impact on the outcome of the event and/or DOE mission objectives.</td>
</tr>
<tr>
<td>A</td>
<td>In addition to satisfying the conditions for B+, the Laboratory also meets all of the following: • Laboratory management has instilled a culture throughout the lab that emphasizes good communication practices. • Communication channels are well-defined and information is effectively conveyed. • Responses to HQ requests for information from all Laboratory representatives are prompt, thorough, correct and succinct; important or critical information is delivered in real-time. • Laboratory representatives always initiate a communication with HQ on emerging Laboratory issues; headquarters is never surprised to learn of emerging Laboratory issues through outside channels.</td>
</tr>
</tbody>
</table>
### Letter Grade | Definition
--- | ---
A- | In addition to satisfying the conditions for B+:  
- Laboratory management has instilled a culture throughout the lab that emphasizes good communication practices; and  
- Responses to requests for information are prompt, thorough, and economical/succinct at all levels of interaction.  
- Laboratory representatives often initiate communication with HQ on emerging Laboratory issues.  
- Under critical circumstances, essential information is delivered in real-time.
B+ | The Laboratory has achieved *each* of the following objectives:  
- Staff throughout the Laboratory organization engage in good communication practices.  
- Responses to requests for information are prompt and thorough.  
- The accuracy and integrity of the information provided is never in doubt.  
- Up-to-date point-of-contact information is widely available for all programmatic areas.  
- Headquarters is always and promptly informed of both positive and negative events at the Laboratory.
B | The Laboratory failed to meet the conditions for B+ in *a few instances*.
B- | The Laboratory fails to meet the conditions for B+ for *one* of the following reasons:  
- Responses to requests for information do not provide the minimum requirements to meet HQ needs.  
- While the integrity of the information provided is never in doubt, its accuracy sometimes is.  
- Laboratory representatives do not take the initiative to alert HQ to emerging Laboratory issues.
C | The Laboratory fails to meet the conditions for B+ for *one or more* of the following reasons:  
- Responses to requests for information frequently fail to provide the minimum requirements to meet HQ needs.  
- The Laboratory used outside channels or circumvented HQ in conveying critical information.  
- The integrity and/or accuracy of information provided is sometimes in doubt.  
- Laboratory management fails to demonstrate that its employees are held accountable for ensuring effective communication and responsiveness.  
- Laboratory representatives failed to alert HQ to emerging Laboratory issues.
D | The Laboratory fails to meet the conditions for B+ for *one* of the following reasons:  
- Laboratory staff are generally well-intentioned in communication but consistently ineffective and/or incompetent.  
- The Laboratory management fails to emphasize the importance of effective communication and responsiveness.
F | The Laboratory fails to meet the conditions for B+ for *one* of the following reasons:  
- Laboratory staff are openly hostile and/or non-responsive to requests for information – emails and phone calls are consistently ignored.  
- Responses to requests for information are consistently incorrect, inaccurate or fraudulent – information is not organized, is incomplete, or is fabricated.
Notable Outcome(s): **Goal 3.0 - Program Management**

- **ASCR:** Participate in and be full members in developing and executing the Department’s Exascale Project to include providing experienced staff and the intellectual engagement of the Laboratory leadership. By January 5 2018, develop an agreement describing how the ALCF and planned upgrade projects will engage with the Exascale Computing Project. (Objective 3.1)

- **ASCR:** Ensure that all communications related to Exascale to include the project and the Departmental cross-cut program between ANL and SC, DOE, vendors, the Administration and Congress are aligned with DOE/ASCR goals, strategies and guidance. (Objective 3.3)

- **BES:** Develop a strategic plan for all elements of the chemical sciences, geosciences, and biosciences research portfolio supported by BES-CSGB. The plan should articulate how an integrated portfolio is managed across ANL organizations and the prioritization of areas for future emphasis, recognizing the evolving portfolio and budget. (Objective 3.1)

- **HEP:** Begin implementing the consolidation and redirection plans developed during the Laboratory Optimization process, smoothing the transition to a full implementation with the FY2019 Field Work Proposal submission. (Objective 3.2)

- **NP:** Develop a new ten year strategic plan that considers scientific opportunities, efficiency of operation, workforce skills, and optimal distribution of funds. The plan should consider community input and take best advantage of available infrastructure and resources. The plan should map out what could be accomplished and the required resources under both a constant effort and optimal budget. Priorities for incremental funding above constant effort should be clearly defined and in the context of the entire facility budget as opposed to within specific budget categories. (Objective 3.1)

<table>
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<tr>
<th>Program Office</th>
<th>Letter Grade</th>
<th>Numerical Score</th>
<th>Weight</th>
<th>Overall Score</th>
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Table 3.1 – Program Performance Goal 3.0 Score Development

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Table 3.2 – Overall Performance Goal 3.0 Score Development

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<td>A-</td>
<td>B+</td>
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<td>B-</td>
<td>C+</td>
<td>C</td>
<td>C-</td>
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Table 3.3 – Goal 3.0 Final Letter Grade

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6 A complete listing of the Objectives weightings under the S&T Goals for the SC Programs is provided within Attachment I to this plan.

7 The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual cost for FY 2018.
GOAL 4.0 Provide Sound and Competent Leadership and Stewardship of the Laboratory

This Goal evaluates the Contractor’s Leadership capabilities in leading the direction of the overall Laboratory, the responsiveness of the Contractor to issues and opportunities for continuous improvement, and corporate office involvement/commitment to the overall success of the Laboratory.

In measuring the performance of the above Objectives, the DOE evaluator(s) shall consider performance trends and outcomes in overall Contractor Leadership’s planning for, integration of, responsiveness to and support for the overall success of the Laboratory. This may include, but is not limited to, the quality of Laboratory Vision/Mission strategic planning documentation and progress in realizing the Laboratory vision/mission; the ability to establish and maintain long-term partnerships/relationships with the scientific and local communities as well as private industry that advance, expand, and benefit the ongoing Laboratory mission(s) and/or provide new opportunities/capabilities; implementation of a robust assurance system; Laboratory and Corporate Office Leadership’s ability to instill responsibility and accountability down and through the entire organization; overall effectiveness of communications with DOE; understanding, management and allocation of the costs of doing business at the Laboratory commensurate with associated risks and benefits; utilization of corporate resources to establish joint appointments or other programs/projects/activities to strengthen the Laboratory; and advancing excellence in stakeholder relations to include good corporate citizenship within the local community.

Objectives:

4.1 Leadership and Stewardship of the Laboratory

By which we mean: The performance of the laboratory’s senior management team as demonstrated by their ability to do such things as:

- Define an exciting yet realistic scientific vision for the future of the laboratory;
- Make progress in realizing the vision for the laboratory;
- Establish and maintain long-term partnerships/relationships that maintain appropriate relations with the scientific and local communities; and
- Develop and leverage appropriate relations with private industry to the benefit of the laboratory and the U.S. taxpayer.

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
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<tbody>
<tr>
<td>A+</td>
<td>The Senior Leadership of the Laboratory has made outstanding progress (on an order of magnitude scale) over the previous year in realizing their vision for the Laboratory, and has had a demonstrable impact on the Department and the Nation. Strategic plans are of outstanding quality, have been externally recognized and referenced for their excellence, and have an impact on the vision/plans of other national laboratories. The Senior leadership of the Laboratory may have been faced very difficult challenges and plotted, successfully, its own course through the difficulty, with minimal hand-holding by the Department. Partners in the scientific and local communities applaud the Laboratory in national fora, and the Department is strengthened by this.</td>
</tr>
<tr>
<td>Letter Grade</td>
<td>Definition</td>
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<tr>
<td>A</td>
<td>The Senior Leadership of the Laboratory has made significant progress over the previous year in realizing their vision for the Laboratory, and has through this has had a demonstrable positive impact on the Office of Science and the Department. Strategic plans are of outstanding quality, and recognize and reflect the vision/plans of other national laboratories. Faced with difficult challenges, actions were taken by the Senior leadership of the Laboratory to redirect Laboratory activities to enhance the long-term future of the Laboratory. Partners in the scientific and local communities applaud the Laboratory in national fora, and the Department is strengthened by this.</td>
</tr>
<tr>
<td>A-</td>
<td>The Laboratory senior management performs better than expected (B+ grade) in these areas.</td>
</tr>
<tr>
<td>B+</td>
<td>The Senior Leadership of the Laboratory has made significant progress over the previous year in realizing their vision for the Laboratory. Strategic plans present long range goals that are both exciting and realistic. Decisions and actions taken by the Laboratory leadership align work, facilities, equipment and technical capabilities with the Laboratory vision and plan. The Senior leadership of the Laboratory faced difficult challenges and successfully plotted its own course through the difficulty, with help from the Department. Partners in the scientific and local communities are supportive of the Laboratory.</td>
</tr>
<tr>
<td>B</td>
<td>The Senior Leadership of the Laboratory has made little progress over the previous year in realizing their vision for the Laboratory. Strategic plans present long range goals that are exciting and realistic; however DOE is not fully confident that the Laboratory is taking the actions necessary for the goals to be achieved. The Laboratory is not fully engaged with its partners/relationships in the scientific and local communities to maximize the potential benefits these relations have for the Laboratory.</td>
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<tr>
<td>C</td>
<td>The Senior Leadership of the Laboratory has made no progress over the previous year in realizing their vision for the Laboratory or aligning work, facilities, equipment and technical capabilities with the Laboratory vision and plan. Strategic plans present long range goals that are either unexciting or unrealistic. Business plans exist, but they are not linked to the strategic plan and do not inspire DOE’s confidence that the strategic goals will be achieved. Partnerships with the scientific and local communities with potential to advance the Laboratory exist, but they may not always be consistent with the mission of or vision for the Laboratory. Affected communities and stakeholders are mostly supportive of the Laboratory and aligned with the management’s vision for the Laboratory.</td>
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<tr>
<td>D</td>
<td>The Senior Leadership of the Laboratory has made no progress or has back-slid over the previous year in realizing their vision for the Laboratory or in aligning work, facilities, equipment and technical capabilities with the Laboratory vision and plan. Strategic plans present long range goals that are neither exciting nor realistic. Partnerships that may advance the Laboratory towards strategic goals are inappropriate, unidentified, or unlikely. Affected communities and stakeholders are not adequately engaged with the Laboratory and indicate non-alignment with DOE priorities.</td>
</tr>
<tr>
<td>F</td>
<td>The Senior Leadership of the Laboratory has made no progress or has back-slid over the previous year in realizing their vision for the Laboratory or in aligning work, facilities, equipment and technical capabilities with the Laboratory vision and plan. Strategic plans present long range goals that are not aligned with DOE priorities or the mission of the Laboratory. Partnerships that may advance the Laboratory towards strategic goals are inappropriate, unidentified, and unlikely, and/or the senior management team does not demonstrate a concerted effort to develop, leverage, and maintain relations with the scientific and local communities to assist the Laboratory in achieving a successful future. Affected communities and stakeholders are openly non-supportive of the Laboratory and DOE priorities.</td>
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</table>
4.2 Management and Operation of the Laboratory

By which we mean: The performance of the Laboratory’s senior management team as demonstrated by their ability to do such things as:

- Implement a robust contractor assurance system,
- Understand the costs of doing business at the Laboratory and prioritize the management and allocation of these costs commensurate with their associated risks and benefits,
- Instill a culture of accountability and responsibility down and through the entire organization;
- Ensure good and timely communication between the Laboratory and SC headquarters and the Site Office so that DOE can deal effectively with both internal and external constituencies.

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<tr>
<th>Letter Grade</th>
<th>Definition</th>
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<tbody>
<tr>
<td>A+</td>
<td>The Laboratory has a nationally or internationally recognized contractor assurance system in place that integrates internal and external (corporate) evaluation processes to evaluate risk, and is working to help others internal and external to the Department establish similarly outstanding practices. The Laboratory understands the drivers of cost at their lab, and are prioritizing and managing these costs commensurate with the associated risks and benefits to the Laboratory and the SC laboratory system. Laboratory management and processes reflect a sense of accountability and responsibility with is evident down and through the entire organization. Communication between the Laboratory and SC headquarters and the Site Office is such that all the national laboratories and the Department as a whole benefits.</td>
</tr>
<tr>
<td>A</td>
<td>The Laboratory has improved dramatically in the last year in all of the following: building a robust and transparent contractor assurance system that integrates internal and external (corporate) evaluation processes to evaluate risk; demonstrating the use of this system in making decisions that are aligned with the Laboratory’s vision and strategic plan; understanding the drivers of cost at their lab, and prioritizing and managing these costs consistent with their associated risks and benefits to the Laboratory and the SC laboratory system; demonstrating laboratory management and processes reflect a sense of accountability and responsibility with is evident down and through the entire organization; assuring communication between the Laboratory and SC headquarters that is beneficial to both the lab and SC.</td>
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<tr>
<td>A-</td>
<td>The Laboratory senior management performs better than expected (B+ grade) in these areas.</td>
</tr>
<tr>
<td>B+</td>
<td>The Laboratory has a robust and transparent contractor assurance system in place that integrates internal and external (corporate) evaluation processes to evaluate risk. The Laboratory can demonstrate use of this system in making decisions that are aligned with the Laboratory’s vision and strategic plan. The Laboratory understands the drivers of cost at their lab, and are prioritizing and managing these costs commensurate with the associated risks and benefits to the Laboratory and the SC laboratory system. Laboratory management and processes reflect a sense of accountability and responsibility with is evident down and through the entire organization. Communication between the Laboratory and SC headquarters and the Site Office is such that there are no surprises or embarrassments.</td>
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</table>
The Laboratory has a contractor assurance system in place but further improvements are necessary, or the link between the CAS and the Laboratory’s decision-making processes are not evident. The Laboratory understands the drivers of cost at their lab, but they are not prioritizing and managing these costs as well as they should to be commensurate with the associated risks and benefits to the Laboratory and the SC laboratory system. Laboratory management and processes reflect a sense of accountability and responsibility with is mostly evident down and through the entire organization. Communication between the Laboratory and SC headquarters and the Site Office is such that there are no significant surprises or embarrassments.

The Laboratory lacks a robust and transparent contractor assurance system in place that integrates internal and external (corporate) evaluation processes to evaluate risk. The Laboratory cannot demonstrate use of this system in making decisions that are aligned with the Laboratory’s vision and strategic plan. The Laboratory does not fully understand the drivers of cost at their lab, and thus are not prioritizing and managing these costs as well as they should to be commensurate with the associated risks and benefits to the Laboratory and the SC laboratory system. Communication between the Laboratory and SC headquarters and the Site Office is such that there has been at least one significant surprise or embarrassment.

The Laboratory lacks a contractor assurance system, doesn’t understand the drivers of cost at their lab, and is not prioritizing and managing costs. SC HQ must intercede in management decisions. Poor communication between the Laboratory and SC headquarters and the Site Office has resulted in more than one significant surprise or embarrassment.

Lack of management by the Laboratory’s senior management has put the future of the Laboratory at risk, or has significantly hurt the reputation of the Office of Science.

4.3 Contractor Value-added

*By which we mean:* the additional benefits that accrue to the Laboratory and the Department of Energy by virtue of having this particular M&O contractor in place. Included here, typically, are things over which the Laboratory leadership does not have immediate authority, such as:

- Corporate involvement/contributions to deal with challenges at the Laboratory;
- Using corporate resources to establish joint appointments or other programs/projects/activities that strengthen the Laboratory, and
- Providing other contributions to the Laboratory that enable the lab to do things that are good for the Laboratory and its community and that DOE cannot supply.

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>A+</td>
<td>The Laboratory has been transformed as a result of the many, substantial, additional benefits that accrue to the lab as a result of this contractor’s operation of the laboratory.</td>
</tr>
<tr>
<td>A</td>
<td>Over the past year, the Laboratory has become demonstrably stronger, better and more attractive as a place of employment as a result of the many, substantial, additional benefits that accrue to the lab as a result of this contractor’s operation of the Laboratory.</td>
</tr>
<tr>
<td>A-</td>
<td>The Laboratory senior management performs better than expected (B+ grade) in these areas.</td>
</tr>
<tr>
<td>B+</td>
<td>The Laboratory enjoys additional benefits above and beyond those associated with managing the Laboratory’s activities that accrue as a result of this contractor’s operation of the laboratory.</td>
</tr>
<tr>
<td>B</td>
<td>The Laboratory enjoys few additional benefits that accrue as a result of this contractor’s operation of the Laboratory; help by the contractor is needed to strengthen the Laboratory.</td>
</tr>
<tr>
<td>C</td>
<td>The Laboratory enjoys few additional benefits that accrue as a result of this contractor’s operation of the Laboratory; the contractor seems unable to help the Laboratory.</td>
</tr>
<tr>
<td>Letter Grade</td>
<td>Definition</td>
</tr>
<tr>
<td>-------------</td>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>D</td>
<td>The Laboratory enjoys few additional benefits that accrue as a result of this contractor’s operation of the Laboratory; the contractor’s efforts are inconsistent with the interests of the Laboratory and the Department.</td>
</tr>
<tr>
<td>F</td>
<td>The Laboratory enjoys no additional benefits that accrue as a result of this contractor’s operation of the Laboratory; the contractor’s efforts are counter-productive to the interests of the Department.</td>
</tr>
</tbody>
</table>

**Notable Outcome: Goal 4.0 - Contractor Leadership / Stewardship**

- Argonne leadership will implement proactive and effective corrective actions, to include external reviews, addressing key safety issues noted over the last few years. (Objective 4.2)

<table>
<thead>
<tr>
<th>ELEMENT</th>
<th>Letter Grade</th>
<th>Numerical Score</th>
<th>Objective Weight</th>
<th>Overall Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goal 4.0 – Provide Sound and Competent Leadership and Stewardship of the Laboratory</td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>4.1 Leadership and Stewardship of the Laboratory</td>
<td></td>
<td></td>
<td>33%</td>
<td></td>
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<tr>
<td>4.2 Management and Operation of the Laboratory</td>
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<tr>
<td>4.3 Contractor Value-Added</td>
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Performance Goal 4.0 Total

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<th>3.7-3.5</th>
<th>3.4-3.1</th>
<th>3.0-2.8</th>
<th>2.7-2.5</th>
<th>2.4-2.1</th>
<th>2.0-1.8</th>
<th>1.7-1.1</th>
<th>1.0-0.8</th>
<th>0.7-0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final Grade</td>
<td>A+</td>
<td>A</td>
<td>A-</td>
<td>B+</td>
<td>B</td>
<td>B-</td>
<td>C</td>
<td>C</td>
<td>C-</td>
<td>D</td>
<td>F</td>
</tr>
</tbody>
</table>

**Table 4.1 – Performance Goal 4.0 Score Development**

**Table 4.2 – Goal 4.0 Final Letter Grade**
GOAL 5.0  Sustain Excellence and Enhance Effectiveness of Integrated Safety, Health, and Environmental Protection

The weight of this Goal is 30%

This Goal evaluates the Contractor’s overall success in deploying, implementing, and improving integrated ES&H systems that efficiently and effectively support the mission(s) of the Laboratory.

5.1 Provide an Efficient and Effective Worker Health and Safety Program

5.2 Provide Efficient and Effective Environmental Management System

In measuring the performance of the above Objectives, the DOE evaluator(s) shall consider performance trends and outcomes in protecting workers, the public, and the environment. This may include, but is not limited to: minimizing the occurrence of environment, safety and health (ESH) incidents; effectiveness of the Integrated Safety Management (ISM) system; effectiveness of work planning, feedback, and improvement processes; the strength of the safety culture throughout the Laboratory; the effective development, implementation and maintenance of an efficient and effective Environmental Management system; and the effectiveness of responses to identified hazards and/or incidents.

Notable Outcome: Goal 5.0 - Environment, Safety and Health

- ASO: Manage corrective action plans addressing FY2017 electrical safety and material handling issues to assure that implemented improvements will effectively address the causes of the incidents. (Objective 5.1)

<table>
<thead>
<tr>
<th>ELEMENT</th>
<th>Letter Grade</th>
<th>Numerical Score</th>
<th>Objective Weight</th>
<th>Overall Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goal 5.0 - Sustain Excellence and Enhance Effectiveness of Integrated Safety, Health, and Environmental Protection.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.1 Provide an Efficient and Effective Worker Health and Safety Program</td>
<td></td>
<td>75%</td>
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</tr>
<tr>
<td>5.2 Provide an Efficient and Effective Environmental Management System</td>
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<td>25%</td>
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</table>

<table>
<thead>
<tr>
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<th>3.7-3.5</th>
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<th>2.7-2.5</th>
<th>2.4-2.1</th>
<th>2.0-1.8</th>
<th>1.7-1.1</th>
<th>1.0-0.8</th>
<th>0.7-0</th>
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</thead>
<tbody>
<tr>
<td>Final Grade</td>
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<td>A</td>
<td>A-</td>
<td>B+</td>
<td>B</td>
<td>B-</td>
<td>C+</td>
<td>C</td>
<td>C-</td>
<td>D</td>
<td>F</td>
</tr>
</tbody>
</table>

Table 5.1 – Performance Goal 5.0 Score Development

Table 5.2 – Goal 5.0 Final Letter Grade
GOAL 6.0  Deliver Efficient, Effective, and Responsive Business Systems and Resources that Enable the Successful Achievement of the Laboratory Mission(s)

The weight of this Goal is 30%.

This Goal evaluates the Contractor’s overall success in deploying, implementing, and improving integrated business systems that efficiently and effectively support the mission(s) of the Laboratory.

6.1 Provide an Efficient, Effective, and Responsive Financial Management System

6.2 Provide an Efficient, Effective, and Responsive Acquisition Management System and Property Management System

6.3 Provide an Efficient, Effective, and Responsive Human Resources Management System and Diversity Program

6.4 Provide Efficient, Effective, and Responsive Contractor Assurance Systems, including Internal Audit and Quality

6.5 Demonstrate Effective Transfer of Knowledge and Technology and Commercialization of Intellectual Assets

In measuring the performance of the above Objectives, the DOE evaluator(s) shall consider performance trends and outcomes in the development, deployment and integration of foundational program (e.g., Contractor Assurance, Quality, Financial Management, Acquisition Management, Property Management, and Human Resource Management) systems across the Laboratory. This may include, but is not limited to: minimizing the occurrence of management systems support issues; quality of work products; continual improvement driven by the results of audits, reviews, and other performance information; the integration of system performance metrics and trends; the degree of knowledge and appropriate utilization of established system processes/procedures by Contractor management and staff; benchmarking and performance trending analysis. The DOE evaluator(s) shall consider the Laboratory’s performance in making progress toward comprehensive collection and submission to OSTI of peer-reviewed accepted manuscripts for journal articles (and associated metadata) resulting from DOE-funded research as called for in the DOE Public Access Plan\(^8\) and cooperation with the Department in meeting relevant requirements to provide other forms of scientific and technical information to OSTI per DOE O 241.1B. The DOE evaluator(s) shall also consider the stewardship of the pipeline of innovations and resulting intellectual assets at the Laboratory along with impacts and returns created/generated as a result of technology transfer, strategic partnership projects (formerly known as work for others) and intellectual asset deployment activities.

Notable Outcome: Goal 6.0 - Business Systems

- **ASO:** Improve integration of risk management practices with other CAS processes (e.g., assessments and issues management) to strengthen the Laboratory’s assurance system. (Objective 6.4)

---

<table>
<thead>
<tr>
<th>ELEMENT</th>
<th>Letter Grade</th>
<th>Numerical Score</th>
<th>Objective Weight</th>
<th>Overall Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goal 6.0 - Deliver Efficient, Effective, and Responsive Business Systems and Resources that Enable the Successful Achievement of the Laboratory Mission(s)</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>6.1 Provide an Efficient, Effective, and Responsive Financial Management System(s)</td>
<td></td>
<td></td>
<td>25%</td>
<td></td>
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<tr>
<td>6.2 Provide an Efficient, Effective, and Responsive Acquisition Management System and Property Management System</td>
<td></td>
<td></td>
<td>15%</td>
<td></td>
</tr>
<tr>
<td>6.3 Provide an Efficient, Effective, and Responsive Human Resources Management System and Diversity Program</td>
<td></td>
<td></td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>6.4 Provide Efficient, Effective, and Responsive Contractor Assurance Systems, including Internal Audit and Quality</td>
<td></td>
<td></td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>6.5 Demonstrate Effective Transfer of Technology and Commercialization of Intellectual Assets</td>
<td></td>
<td></td>
<td>20%</td>
<td></td>
</tr>
</tbody>
</table>

Performance Goal 6.0 Total

**Table 6.1 – Performance Goal 6.0 Score Development**

<table>
<thead>
<tr>
<th>Total Score</th>
<th>4.3-4.1</th>
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<th>2.0-1.8</th>
<th>1.7-1.1</th>
<th>1.0-0.8</th>
<th>0.7-0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final Grade</td>
<td>A+</td>
<td>A</td>
<td>A-</td>
<td>B+</td>
<td>B</td>
<td>B-</td>
<td>C+</td>
<td>C</td>
<td>C-</td>
<td>D</td>
<td>F</td>
</tr>
</tbody>
</table>

**Table 6.2 – Goal 6.0 Final Letter Grade**
GOAL 7.0  Sustain Excellence in Operating, Maintaining, and Renewing the Facility and Infrastructure Portfolio to Meet Laboratory Needs

The weight of this Goal is 20%.

This Goal evaluates the overall effectiveness and performance of the Contractor in planning for, delivering, and operations of Laboratory facilities and equipment needed to ensure required capabilities are present to meet today's and tomorrow's mission(s) and complex challenges.

7.1 Manage Facilities and Infrastructure in an Efficient and Effective Manner that Optimizes Usage, Minimizes Life Cycle Costs, and Ensures Site Capability to Meet Mission Needs

7.2 Provide Planning for and Acquire the Facilities and Infrastructure Required to Support the Continuation and Growth of Laboratory Missions and Programs

In measuring the performance of the above Objectives, the DOE evaluator(s) shall consider performance trends and outcomes in facility and infrastructure programs. This may include, but is not limited to: the management of real property assets to maintain effective operational safety, worker health, environmental protection and compliance, property preservation, and cost effectiveness; effective facility utilization, maintenance and budget execution; day-to-day management and utilization of space in the active portfolio; maintenance and renewal of building systems, structures and components associated with the Laboratory’s facility and land assets; management of energy use, conservation, and sustainability practices; the integration and alignment of the Laboratory’s comprehensive strategic plan with capabilities; facility planning, forecasting, and acquisition; the delivery of accurate and timely information required to carry out the critical decision and budget formulation process; quality of site and facility planning documents; and Cost and Schedule Performance Index performance for facility and infrastructure projects.

Notable Outcome:  Goal 7.0 - Facilities and Infrastructure

- Ensure that Argonne’s Earned Value Management System is ready to be re-certified by DOE in FY2018/FY2019. (Objective 7.2)
## Performance Goal 7.0: Sustain Excellence in Operating, Maintaining, and Renewing the Facility and Infrastructure Portfolio to Meet Laboratory Needs

<table>
<thead>
<tr>
<th>ELEMENT</th>
<th>Letter Grade</th>
<th>Numerical Score</th>
<th>Objective Weight</th>
<th>Overall Score</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Goal 7.0 - Sustain Excellence in Operating,</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Maintaining,</strong> and <strong>Renewing the Facility and</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Infrastructure Portfolio to Meet Laboratory Needs.</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.1 Manage Facilities and Infrastructure in an Efficient and Effective</td>
<td></td>
<td></td>
<td>40%</td>
<td></td>
</tr>
<tr>
<td>Manner that Optimizes Usage, Minimizes Life Cycle Costs, and Ensures</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site Capability to Meet Mission Needs</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.2 Provide Planning for and Acquire the Facilities and Infrastructure</td>
<td></td>
<td></td>
<td>60%</td>
<td></td>
</tr>
<tr>
<td>Required to Support the Continuation and Growth of Laboratory Missions</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>and Programs</td>
<td></td>
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</tr>
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</table>

**Performance Goal 7.0 Total**

Table 7.1 – Performance Goal 7.0 Score Development

<table>
<thead>
<tr>
<th>Total Score</th>
<th>4.3-4.1</th>
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<th>3.7-3.5</th>
<th>3.4-3.1</th>
<th>3.0-2.8</th>
<th>2.7-2.5</th>
<th>2.4-2.1</th>
<th>2.0-1.8</th>
<th>1.7-1.1</th>
<th>1.0-0.8</th>
<th>0.7-0</th>
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</thead>
<tbody>
<tr>
<td>Final Grade</td>
<td>A+</td>
<td>A</td>
<td>A-</td>
<td>B+</td>
<td>B</td>
<td>B-</td>
<td>C+</td>
<td>C</td>
<td>C-</td>
<td>D</td>
<td>F</td>
</tr>
</tbody>
</table>

Table 7.2 – Goal 7.0 Final Letter Grade
GOAL 8.0  Sustain and Enhance the Effectiveness of Integrated Safeguards and Security Management (ISSM) and Emergency Management Systems

The weight of this Goal is 20%.

This Goal evaluates the Contractor’s overall success in safeguarding and securing Laboratory assets that supports the mission(s) of the Laboratory in an efficient and effective manner and provides an effective emergency management program.

8.1 Provide an Efficient and Effective Emergency Management System

8.2 Provide an Efficient and Effective Cyber Security System for the Protection of Classified and Unclassified Information

8.3 Provide an Efficient and Effective Physical Security Program for the Protection of Special Nuclear Materials, Classified Matter, Classified Information, Sensitive Information, and Property

In measuring the performance of the above Objectives, the DOE evaluator(s) shall consider performance trends and outcomes in the safeguards and security, cyber security and emergency management program systems. This may include, but is not limited to: the commitment of leadership to strong safeguards and security, cyber security and emergency management systems; the integration of these systems into the culture of the Laboratory; the degree of knowledge and appropriate utilization of established system processes/procedures by Contractor management and staff; maintenance and the appropriate utilization of Safeguards, Security, and Cyber risk identification, prevention, and control processes/activities; and the prevention and management controls and prompt reporting and mitigation of events as necessary.

Notable Outcome: Goal 8.0 - Security and Emergency Management

- ASO: Complete corrective actions addressing issues identified in the May 2017 Safeguards and Security assessment, in particular MC&A. Verify that corrective actions effectively address the causes of the issues, and that the Safeguards and Security program is compliant. (Objectives 8.2 and 8.3)
<table>
<thead>
<tr>
<th>ELEMENT</th>
<th>Letter Grade</th>
<th>Numerical Score</th>
<th>Objective Weight</th>
<th>Overall Score</th>
</tr>
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<tbody>
<tr>
<td><strong>Goal 8.0 - Sustain and Enhance the Effectiveness of Integrated Safeguards and Security Management (ISSM) and Emergency Management Systems.</strong></td>
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<tr>
<td>8.1 Provide an Efficient and Effective Emergency Management System</td>
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<tr>
<td>8.2 Provide an Efficient and Effective Cyber Security System for the Protection of Classified and Unclassified Information</td>
<td></td>
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<td>35%</td>
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<tr>
<td>8.3 Provide an Efficient and Effective Physical Security Program for the Protection of Special Nuclear Materials, Classified Matter, Classified Information, Sensitive Information, and Property</td>
<td></td>
<td></td>
<td>40%</td>
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</table>

| Performance Goal 8.0 Total |

Table 8.1 – Performance Goal 8.0 Score Development

<table>
<thead>
<tr>
<th>Total Score</th>
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<th>3.4-3.1</th>
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<th>1.7-1.1</th>
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<th>0.7-0</th>
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</thead>
<tbody>
<tr>
<td>Final Grade</td>
<td>A+</td>
<td>A</td>
<td>A-</td>
<td>B+</td>
<td>B</td>
<td>B-</td>
<td>C+</td>
<td>C</td>
<td>C-</td>
<td>D</td>
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Table 8.2 – Goal 8.0 Final Letter Grade
## Attachment I

### Program Office Goal & Objective Weightings

**Office of Science**

<table>
<thead>
<tr>
<th>Goal 1.0 Mission Accomplishment</th>
<th>ASCR Weight</th>
<th>BER Weight</th>
<th>BES Weight</th>
<th>HEP Weight</th>
<th>NP Weight</th>
<th>WDTS Weight</th>
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</thead>
<tbody>
<tr>
<td>1.1 Impact</td>
<td>50%</td>
<td>50%</td>
<td>50%</td>
<td>60%</td>
<td>50%</td>
<td>80%</td>
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<tr>
<td>1.2 Leadership</td>
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<td>50%</td>
<td>40%</td>
<td>50%</td>
<td>20%</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Goal 2.0 Design, Fabrication, Construction and Operation of Facilities</th>
<th>ASCR Weight</th>
<th>BER Weight</th>
<th>BES Weight</th>
<th>HEP Weight</th>
<th>NP Weight</th>
<th>WDTS Weight</th>
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</thead>
<tbody>
<tr>
<td>2.1 Design of Facility (the initiation phase and the definition phase, i.e. activities leading up to CD-2)</td>
<td>20%</td>
<td>0%</td>
<td>35%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
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<tr>
<td>2.2 Construction of Facility / Fabrication of Components (execution phase, Post CD-2 to CD-4)</td>
<td>30%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
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<tr>
<td>2.3 Operation of Facility</td>
<td>40%</td>
<td>90%</td>
<td>35%</td>
<td>0%</td>
<td>85%</td>
<td>0%</td>
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<tr>
<td>2.4 Utilization of Facility to Grow and Support Lab's Research Base and External User Community</td>
<td>10%</td>
<td>10%</td>
<td>30%</td>
<td>0%</td>
<td>15%</td>
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<table>
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<tr>
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<th>HEP Weight</th>
<th>NP Weight</th>
<th>WDTS Weight</th>
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<tbody>
<tr>
<td>3.1 Effective and Efficient Strategic Planning and Stewardship</td>
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<td>20%</td>
<td>30%</td>
<td>30%</td>
<td>40%</td>
<td>20%</td>
</tr>
<tr>
<td>3.2 Project/Program/Facilities Management</td>
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<td>30%</td>
<td>40%</td>
<td>45%</td>
<td>35%</td>
<td>50%</td>
</tr>
<tr>
<td>3.3 Communications and Responsiveness</td>
<td>30%</td>
<td>50%</td>
<td>30%</td>
<td>25%</td>
<td>25%</td>
<td>30%</td>
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</table>
## Attachment I (continued)
### Program Office Goal & Objective Weightings
#### All Other Customers

<table>
<thead>
<tr>
<th>Goal 1.0 Mission Accomplishment</th>
<th>DNN</th>
<th>DHS</th>
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<tr>
<th>Goal 2.0 Design, Fabrication, Construction and Operation of Facilities</th>
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<tbody>
<tr>
<td>2.1 Design of Facility (the initiation phase and the definition phase, i.e. activities leading up to CD-2)</td>
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<td>2.2 Construction of Facility/Fabrication of Components (execution phase, Post CD-2 to CD-4)</td>
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<td>2.3 Operation of Facility</td>
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<td>2.4 Utilization of Facility to Grow and Support Lab’s Research Base and External User Community</td>
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<td>Goal 3.0 Program Management</td>
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<tr>
<td>3.1 Effective and Efficient Strategic Planning and Stewardship</td>
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<td>3.2 Project/Program/Facilities Management</td>
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<tr>
<td>3.3 Communications and Responsiveness</td>
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</tbody>
</table>

8 Goal and Objective weightings indicated for non-science customers are reflective of FY 2018 weightings and will be updated as those customers provide their weightings. Final Goal and Objective weightings will be incorporated, as appropriate, once they are determined by each HQ Program Office and provided to the Site Office. Should a HQ Program Office fail to provide final Goal and Objective weightings before the end of the first quarter FY2018 the preliminary weightings provided shall become final.
SPECIAL FINANCIAL INSTITUTION ACCOUNT
AGREEMENT FOR USE WITH THE PAYMENTS CLEARED FINANCING
ARRANGEMENT

Agreement entered into this, 1st day of August, 2011 between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as "DOE"), and UChicago Argonne LLC, a corporation/legal entity existing under the laws of the State of Illinois (hereinafter referred to as the Contractor) and MB Financial Bank, N.A., a National Banking Association existing under the laws of the United States of America, located at 2607 Lincoln Hwy, St. Charles, IL 60175, (hereinafter referred to as the Financial Institution).

RECITALS

(a) On the effective date of August 1, 2006 – DOE and the Contractor entered into Agreement(s) No. DE-AC02-06CH11357 or a Supplemental Agreement(s) thereto, providing for the transfer of funds on a payments-cleared basis.

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

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

(c) The Special Demand Deposit Account shall be designated "UChicago Argonne LLC, operator of Argonne National Laboratory."

COVENANTS

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

(1) The Government shall have a title to the credit balance in said account to secure the repayment of all funds transferred to the Contractor, and said title shall be superior to any lien, title, or claim of the Financial Institution or others with respect to such accounts.

(2) The Financial Institution shall be bound by the provisions of said Agreement(s) between DOE and the Contractor relating to the transfer of funds into and withdrawal of funds from the above Special Demand Deposit Account, which are hereby incorporated into this Agreement by reference, but the Financial Institution shall not be responsible for the application of funds withdrawn from said account. After
receipt by the Financial Institution of directions from DOE, the Financial Institution shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Financial Institution from the Government upon DOE stationery and purporting to be signed by, or signed at the written direction of, the Government may, insofar as the rights, duties, and the liabilities of the Financial Institution are concerned, be considered as having been properly issued and filed with the Financial Institution by DOE.

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

(4) In the event of the service of any writ of attachment, levy or execution, or commencement of garnishment proceedings with respect to the Special Demand Deposit Account, the Financial Institution shall promptly notify DOE at:

Kristin E. Palmer  
Contracting Officer  
Argonne Site office  
9800 South Cass Avenue  
Argonne, IL 60439  

(5) DOE shall authorize funds that shall remain available to the extent obligations have been incurred in good faith thereunder by the Contractor to the Financial Institution for benefit of the Special Demand Deposit Account. The Financial Institution agrees to honor upon presentation for payment all payments issued by the Contractor and to restrict all withdrawals against the funds authorized to an amount to maintain the average daily balance in the Special Demand Deposit Account in a net positive and as close to zero as administratively possible.

The Financial Institution agrees that per-item costs detailed in the form “Schedule of Financial Institution Processing Charges,” contained in the Financial Institution’s aforesaid bid will remain constant during the term of this agreement. The Financial Institution shall calculate the monthly fees based on services rendered and invoice the contractor. The contractor shall issue a check or automated clearing authorization transfer to the Financial Institution in payment thereof.

(6) The Financial Institution shall post collateral in accordance with 31 CFR 202 with the Federal Reserve Bank in an amount equal to the net balances in all of the accounts included in this Agreement (including the non-interest-bearing time deposit account), less the Department of the Treasury-approved deposit insurance.
This Agreement, with all its provisions and covenants, shall be in effect for a term of 4 years, beginning on the 1st day of August, 2011 and ending on the 31st day of July, 2015, with the option to extend the contract for one one-year period at the same unit service charge rates.

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

DOE or the Contractor may terminate this Agreement at any time upon 30 days written notice to the Financial Institution if DOE or the Contractor, or both parties, find that the Financial Institution has failed to substantially perform its obligations under this Agreement or that the Financial Institution is performing its obligations in a manner that precludes administering the program in an effective and efficient manner or that precludes the effective utilization of the Government’s cash resources.

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

In the event of termination, the Financial Institution agrees to retain the contractor’s Special Demand Deposit Account for an additional 90-day period to clear outstanding payment items.

This Agreement shall continue in effect for the 90-day additional period, with the exception of the following:

1. Term of Agreement (Covenant (7))
2. Termination of Agreement (Covenant (8) and (9))

All other terms and conditions that are not inconsistent with this 90-day additional term shall remain in effect for this period.

After all checks have been paid, the Financial Institution will forward the balance by check made payable to the U.S. Department of Energy and mailed to:

Department of Energy
Office of Science
Chicago Office, Accounting & Finance
9800 South Cass Avenue
Argonne, IL 60439
(12) Financial Institution has submitted the attachments entitled “Representations and Certifications”, “Technical Representations and Certifications”, “Schedule of Financial Institution Processing Charges”, and “Additional Certifications”. These forms have been accepted by the Contractor and the Government and are incorporated herein with the document entitled “Financial Institution’s Information on Payments Cleared Financing Arrangement” as an integral part of this Agreement.
IN WITNESS WHEREOF the parties hereto have caused this Agreement, which consists of 7 pages, including the signature pages, to be executed as of the day and year first above written.

Kristin E. Palmer
Contracting Officer

By
(Typed Name of Contracting Officer)

Signature of Contracting Officer

UChicago Argonne, LLC
(Typed Name of Contractor)

By Eric D. Isaacs
(Typed Name of Contractor's Representative)

Signature of Contractor's Representative

President

Title

9700 South Cass Avenue
Argonne, IL 60439

Address

7-29-11
(Date Signed)

(Typed Name of Witness)

MB Financial Bank, N.A.
(Typed Name of Financial Institution)

Mitchell E. Belon, S.V.P.

(Typed Name of Financial Institution Representative)

Note: In the case of a corporation, a witness is not required. Type or print names under all signatures.
(Signature of Witness)
Note: In the case of a corporation, a witness is not required. Type or print names under all signatures.

(Signature of Financial Institution Representative)

Senior Vice President

(Title)

2670 Lincoln Hwy. St Charles, IL 60175

(Address)

7/3/11

(Date Signed)
CERTIFICATE

I, Donald H. Levy, certify that I am the Chief Executive Officer of the limited liability company named as Contractor herein; that Eric D. Isaacs, who signed this Agreement on behalf of the Contractor, was then President of said limited liability company; and that said Agreement was duly signed for and in behalf of said limited liability company by authority of its governing body and is within the scope of its organizational powers.

(Signature)  
7-29-11  
(Date)

NOTE

Financial Institution, if a corporation, shall cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and the Certificate.

CERTIFICATE

I, Ania Dwyer, certify that I am the Senior Vice President of the corporation named as Financial Institution herein; that Mitchell Bein, who signed this Agreement on behalf of the Financial Institution, was then Senior Vice President of said corporation; and that said Agreement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(Corporate Seal) (Signature)  
7/29/11  
(Date)
ATTACHMENT J.4

APPENDIX D

CONTRACTOR’S COMMITMENTS

Applicable to the Operation of Argonne National Laboratory

Contract No. DE-AC02-06CH11357
Commitment Area: Mission Support

Commitment: Strategic Collaborative Initiatives

Resource Provider: University of Chicago

Location: University of Chicago and Argonne National Laboratory

Description:

Funds for strategic joint appointments, collaborative research projects and joint institutes.

Monetary Value:

Approximately $1.25 million annually; $6.25M over the base contract. The collaborative research grants fund will have a set value of approximately $500,000. The remaining $750,000 will be spent on strategic joint appointments and joint institute activities.

Argonne/DOE Benefits:

These funds will provide the Laboratory Director with flexibility to develop or expedite progress in promising programmatic areas and thus enable the Laboratory to achieve certain DOE missions in a more expeditious manner. Working with the University, Argonne will be better positioned to attract world-class talent. Such funds and talent will allow Argonne to pursue other lines of work which may complement the DOE mission and create new ventures and discoveries that further push the frontiers of science.

Date Provided: Upon award

Related Liability: None

Resource Manager:
Thomas Rosenbaum, Vice President for Research and for Argonne National Laboratory

Argonne Integration:
Laboratory Director

Other issues:
None

The cost to provide this corporate commitment is, for the purposes of this contract, acknowledged to be unallowable costs, with the further understanding that such commitment would only be undertaken so long as the contract remains in effect. Such commitment is further acknowledged to be separate from and unrelated to the fee.

Authorized Signer: ________________________________

Printed Name: THOMAS F. ROSENBAUM

Title: VP FOR RESEARCH AND FOR ARGONNE

Organization: UNIVERSITY OF CHICAGO

Date: 5/26/06
Commitment Area: Business Operations

Commitment: Digital Laboratory Implementation Support

Resource Provider: University of Chicago
Location: University of Chicago and Argonne National Laboratory

Description:
Provide funds to support the implementation of the Digital Laboratory Initiative

Monetary Value:
$400,000 to be distributed over the first three years of the contract: $200,000, $150,000 and $50,000 or as Argonne deems appropriate.

Argonne/DOE Benefits:
These funds will provide Argonne's Chief Information Officer with additional means to expedite the implementation of the Digital Laboratory Initiative. This commitment complements the resources our partners are providing and will lead to a quicker implementation and therefore earlier realization of the benefits. This will provide more cost savings for Argonne and therefore the Department.

Date Provided: Related Liability: Resource Manager:
Upon award None Thomas Rosenbaum, Vice President for Research and for Argonne National Laboratory

Argonne Integration:
Remy Eymard, Chief Information Officer

Other Issues:
None

The cost to provide this corporate commitment is, for the purposes of this contract, acknowledged to be unallowable costs, with the further understanding that such commitment would only be undertaken so long as the contract remains in effect. Such commitment is further acknowledged to be separate from and unrelated to the fee.

Authorized Signer: /s/ Thomas F. Rosenbaum

Printed Name: THOMAS F. ROSENBAUM

Title: VP FOR RESEARCH AND FOR ARGONNE

Organization: UNIVERSITY OF CHICAGO

Date: 5/26/06
Commitment: Council on Education and Outreach

Resource Provider: University of Chicago  
Location: University of Chicago and Argonne National Laboratory

Description:

UoC is establishing a Council on Education Outreach to be the decision-making focal point for a number of initiatives that will benefit science and education programs. Scholarships, special grants for science and engineering projects, and focused efforts to bring additional students into science and engineering fields will be organized and executed by the Council.

Monetary Value:

$50,000 per year; $250,000 over the base contract.

Argonne/OE Benefits:

These funds will allow Argonne to increase the scope of its outreach activities, enhancing the strong education program in place. The efforts of the Council will result in the attraction of more underrepresented persons to careers in science and technology.

Date Provided:  
Upon award: None

Related Liability: None

Resource Manager: Diana Jergovic, Assistant Vice President for Research and Education

Argonne Integration:

Harold Myron, Director, Division of Education Programs

Other Issues:

None.

The cost to provide this corporate commitment is, for the purposes of this contract, acknowledged to be unallowable costs, with the further understanding that such commitment would only be undertaken so long as the contract remains in effect. Such commitment is further acknowledged to be separate from and unrelated to the fee.

Authorized Signer: THOMAS F. ROSENBAUM

Printed Name: THOMAS F. ROSENBAUM

Title: NP FOR RESEARCH AND FOR ARGONNE

Organization: UNIVERSITY OF CHICAGO

Date: 5/26/06
## Commitment Area: Education

**Commitment:** Executive Education for Argonne Staff and Scientists

<table>
<thead>
<tr>
<th>Resource Provider:</th>
<th>University of Chicago Graduate School of Business</th>
<th>Location: University of Chicago Argonne National Laboratory</th>
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</thead>
</table>

### Description:

The University of Chicago Graduate School of Business commits to working with Argonne and the Department of Energy to create a non-degree program for Argonne professional and scientific staff (see attached letter).

### Monetary Value:

Value depends on agreed upon program.

### Argonne/DOE Benefits:

Argonne will benefit from more sophisticated management staff, whereby cost savings realized from more efficient administration are funded into the science programs to allow more mission critical work to be accomplished.

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<th>Date Provided:</th>
<th>Related Liability:</th>
<th>Resource Manager:</th>
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<tr>
<td>Upon award</td>
<td>None</td>
<td>Diana Jergovic, Assistant Vice President for Research and Education</td>
</tr>
</tbody>
</table>

### Argonne Integration:

Michael Turner, Chief Scientist/Director, Strategic Planning

### Other Issues:

None

The need to provide this corporate commitment is, for the purposes of this contract, acknowledged to be unallowable costs, with the further understanding that such commitment would only be undertaken so long as the contract remains in effect. Such commitment is further acknowledged to be separate from and unrelated to the fee.

### Authorized Signer:

Thomas F. Rosenbaum

### Title:

VP for Research and for Argonne

### Organization:

University of Chicago

### Date:

5/26/06
May 10, 2006

United States Department of Energy
9800 S. Cass Avenue
Argonne, IL 60439

Dear Source Evaluation Board:

The University of Chicago Graduate School of Business is pleased to commit the
necessary resources to design and implement a non-degree Executive Education program
exclusively for staff of Argonne National Laboratory.

We propose to work closely with Argonne leadership and the Department of Energy to
design a curriculum that provides the greatest value to Laboratory management, scientists,
and other employees.

We believe that, with input and support from the Laboratory and the Department, we can
develop a model program that can be made available to all staff in the Department’s
system of laboratories.

We look forward to potentially collaborating with you on this very promising project.

Sincerely,

Edward A. Snyder
Dean and
George P. Shultz Professor

Steve LaCivita
Associate Dean

Executive Education

Michael Malefakis
Director

Executive Education
Commitment Area: Education

Commitment: University of Chicago Scholarships for dependent children of Argonne employees

Resource Provider: University of Chicago  Location: University of Chicago, Hyde Park campus

Description:

UoC will continue to provide scholarships to the dependent children of Argonne employees. The dependent children must seek admission to the University of Chicago, be admitted into the University of Chicago, and accept the offer. Future scholarships will be made in accord with all policies and procedures currently in place.

Monetary Value:

Approximately $2,640,000 over 5 years, assuming approximately $44,000 in current tuition, room & board, and fees.

Argonne/DOE Benefits:

Providing such a rare and significant benefit serves to both attract and retain the highest caliber of scientist and staff.

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<th>Resource Manager:</th>
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<tr>
<td>Upon award</td>
<td>None</td>
<td>Andre Phillips, Associate Director, University of Chicago Office of Admissions</td>
</tr>
</tbody>
</table>

Argonne Integration:

Harold Myron, Director, Division of Education Programs

Other Issues:

None

The cost to provide this corporate commitment is, for the purposes of this contract, acknowledged to be unallowable costs, with the further understanding that such commitment would only be undertaken so long as the contract remains in effect. Such commitment is further acknowledged to be separate from and unrelated to the fee.

Authorized Signer: [Signature]

Printed Name: Thomas F. Rosenbaum

Title: VP FOR RESEARCH AND FOR ARGONNE

Organization: UNIVERSITY OF CHICAGO

Date: 5/26/06
Commitment Area: Mission Support

Commitment: Corporate Support of Board of Governors' Operations Reviews

Resource Provider: Jacobs Engineering  Location: Argonne National Laboratory

Description:
We will provide Jacobs expertise to regularly scheduled Board of Governors' reviews of Argonne operations. This will be managed so that each operations review by the UoC will include one member from Jacobs at no cost to the government.

Monetary Value:
Assuming 5 operations reviews each of 2½ days duration, the monetary value to Argonne is approximately $10,000 per review or $50,000 over the course of the base contract.

Argonne/DOE Benefits:
By including Jacobs expertise along with University of Chicago operations professionals and external reviewers, Argonne and the DOE will receive a composite operations review and better informed feedback on operations performance. With such a fully integrated review team, Argonne and the DOE will get continuous operations improvement in a more efficient manner. These will also provide Bo Arnold with additional external perspectives so that he can better leverage Jacobs resources and improve operations at Argonne.

Date Provided:  Related Liability:  Resource Manager:
Upon award  None  Bo Arnold, Jacobs

Argonne Integration:
The Argonne Board of Governors will be the responsible organization to charter the review and receive the results via briefings and reports. Bo Arnold will identify the appropriate Jacobs representative to be included in each review.

Other Issues:
None
The cost to provide this corporate commitment is, for the purposes of this contract, acknowledged to be unallowable costs, with the further understanding that such commitment would only be undertaken so long as the contract remains in effect. Such commitment is further acknowledged to be separate from and unrelated to the fee.

Authorized Signer:  Steven D. Richardson

Printed Name: Steven D. Richardson  Title: Director, DOE Programs  Organization: Jacobs  Date: May 24, 2006
Commitment Area: Business and Operations

Commitment: Training for Argonne Staff

Resource Provider: Jacobs Engineering
Location: Argonne National Laboratory

Description:
Jacobs will provide subject matter experts to conduct training at Argonne for Argonne management and staff in mission-critical areas including behavior-based safety, project management, and ISO certification. This program will be executed in concert with the University of Chicago’s proposed Executive Education Program to ensure full complementarity and avoid duplication of effort.

Monetary Value:
Assuming 1 trainer, 3 topics and 2 days of training per topic done twice annually, and travel for Jacobs staff, the monetary value to Argonne is approximately $50,000 over the 5 year base contract.

Argonne/DOE Benefits:
Argonne and DOE would maintain a professional development program in a very economical and time efficient manner. Argonne and DOE would also benefit by having staff who are better trained to do their jobs and everyone would benefit from the lessons learned at Jacobs and taught at training.

Date Provided: Related Liability: Resource Manager:
Upon award: None Bo Arnold, Jacobs

Argonne Integration:
This initiative would be integrated through the office of Bo Arnold, Operations and Business Management ALD

Other Issues:
None

The cost to provide this corporate commitment is, for the purposes of this contract, acknowledged to be unallowable costs, with the further understanding that such commitment would only be undertaken so long as the contract remains in effect. Such commitment is further acknowledged to be separate from and unrelated to the fee.

Authorized Signer: [Signature]

Printed Name: STEVEN D. RICHARDSON

Title: Director, DOE Programs

Organization: Jacobs

Date: May 24, 2006
Commitment: Business Systems

Resource Provider: Jacobs Engineering  
Location: Argonne National Laboratory

Description:
Jacobs is proposing that a number of business systems be consolidated or replaced as part of our effort to implement proven and up-to-date Argonne business applications. A corporate initiative will be implemented to perform an in-depth review on a periodic basis of the laboratory business system architecture with the specific purpose of making two determinations: 1) are the improvements achieving the desired results, and 2) what are the next improvements that should be implemented in order to continually improve business system performance. Visits to selected Jacobs projects to review particular business system improvements would be arranged. This review would also be performed at no additional direct cost to the government and the results will be shared with laboratory management including the Board of Governors.

Monetary Value:
Assuming 8-10 members of the team for a one week duration of the business systems review, the monetary value to Argonne is approximately $40,000 per review.

Argonne/DOE Benefits:
Argonne and DOE would receive the perspective from outside individuals on how to improve Argonne safety performance. In addition, recommendations from this review group would be tracked and reviewed during subsequent reviews.

Date Provided: Related Liability:  
Upon award: None  
Resource Manager: Bo Arnold, Jacobs

Argonne Integration:
This initiative would be integrated through the onsite CFO/IT organizations for coordination, planning and other details of the onsite review effort. The Argonne Board of Governors will be the responsible organization to charter the review and receive the results via briefings and reports. Additionally, with the approval of the Board, DOE will be invited to key review sessions and/or result discussions.

Other Issues:
None
The cost to provide this corporate commitment is, for the purposes of this contract, acknowledged to be unallowable costs, with the further understanding that such commitment would only be undertaken so long as the contract remains in effect. Such commitment is further acknowledged to be separate from and unrelated to the fee.

Authorized Signer: 

Printed Name: STEVEN D. RICHARDSON
Title: Director, DOE Programs
Organization: Jacobs
Date: May 24, 2006
Commitment Area: Education

Commitment: Council on Education and Outreach

Resource Provider: Jacobs Engineering
Location: Argonne National Laboratory

Description:
The University of Chicago is establishing a Council on Education Outreach to be the decision-making focal point for a number of initiatives that will benefit science and education programs. Scholarships special grants for science and engineering projects, and focused efforts to bring additional students into science and engineering fields will be organized and executed by the Council. Jacobs will provide, at no additional cost to the government, a representative to sit on the Council and a nominal contribution to supplement the University’s budget allocation for the Council.

Monetary Value:
Assuming 1 member from Jacobs to sit on the Council for the 6 meetings per year and a cash contribution of $5,000 per year for the base term of the new contract, the monetary value to Argonne is approximately $70,000 for the base 5 year term of the contract.

Argonne/DOE Benefits:
Argonne and DOE would receive the perspective from outside individuals on how to improve Argonne and University performance in the area of Science and Engineering educational outreach.

Date Provided: Related Liability: Resource Manager:
Upon award and throughout the base term of the contract: None Bo Arnold, Jacobs

Argonne Integration:
Harold Myron, Director, Division of Education Programs

Other Issues:
None

The cost to provide this corporate commitment is, for the purposes of this contract, acknowledged to be unallowable costs, with the further understanding that such commitment would only be undertaken so long as the contract remains in effect. Such commitment is further acknowledged to be separate from and unrelated to the fee.

Authorized Signer: Steven D. Richardson

Printed Name: Steven D. Richardson
Title: Director, DOE Programs
Organization: Jacobs
Date: May 24, 2006
## Commitment: Council on Education and Outreach

**Resource Provider:** BWXT  
**Location:** Argonne National Laboratory

### Description:
The University of Chicago is establishing a Council on Education and Outreach to be the decision-making focal point for a number of initiatives that will supplant existing science and education programs. Scholarships, special grants for science and engineering education projects, and focused efforts to bring additional students into science and engineering fields will be organized and executed by the Council.

### Monetary Value:

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<tr>
<th>Description</th>
<th>Basis of Estimate</th>
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<tr>
<td>$29,000</td>
<td>$2,500 Monetary Contribution x 5 = $12,500</td>
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<td></td>
<td>$3,300 Labor and Travel Costs of BWXT Board Member x 5 = $16,500</td>
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</table>

### Argonne/DOE Benefits:
Argonne and DOE would receive outside perspective on how to improve Argonne and University performance in the area of Science and Engineering Educational Outreach.

### Date Provided:

- **Related Liability:** None
- **Resource Manager:** Chuck Bernhard, Senior Business Development Manager, BWXT

### Argonne Integration:

- **Harold Myron, Director of Education Programs**

### Other Issues:

- **None**

The cost to provide this corporate commitment is, for the purposes of this contract, acknowledged to be unallowable costs, with the further understanding that such commitment would only be undertaken so long as the contract remains in effect. Such commitment is further acknowledged to be separate from and unrelated to the fee.

### Authorized Signer:

[Signature]

**Printed Name:** Tracy Culliver

**Title:** Director, Contracts

**Organization:** BWXT Services, Inc.

**Date:** 5-24-06
Commitment Area: Mission Support

Commitment: Independent Safety Review and Assessment Team

Resource Provider: BWXT
Location: Argonne National Laboratory

Description:
Provide Independent Safety Audit Team (ISAT) of Senior BWXT Executives to conduct semi-annual reviews of Argonne safety issues for Year One, and annually, thereafter, through the base period of the contract. Priority attention in Year One will be given to the progress being made in implementing the Corrective Action Plan (CAP) that has been developed to respond to the PAAA NOV. The primary focus of ISAT for Years Two through Five will be in monitoring, management effectiveness in establishing a long-term disciplined safety culture at Argonne. ISAT will also play an advisory role on potential safety issues on Argonne Initiatives related to the Global Nuclear Energy Program (GNEP).

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<thead>
<tr>
<th>Monetary Value:</th>
<th>Basis of Estimate:</th>
<th>Labor and Travel Costs:</th>
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<tbody>
<tr>
<td>$133,110</td>
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<tr>
<td></td>
<td>Gary Hooves</td>
<td>$21,986</td>
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<tr>
<td></td>
<td>Dave Zeff</td>
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<td></td>
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<td>$133,116</td>
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</table>

Argonne/DOE Benefits:
Provides extra layer of support at Argonne for addressing its PAA issues and for implementing a disciplined, long-term safety culture. Also provides vehicle for identifying key nuclear safety issues that need to be addressed relative to Argonne GNEP Initiatives.

Date Provided: Upon Award: first review in December 2006
Related Liability: None
Resource Manager: Dave Zeff, Director, ESH&Q, BWXT Services

Argonne Integration:
ESH&Q and Performance Assurance, Nuclear Operations

Other Issues:
None

The cost to provide this corporate commitment is, for the purposes of this contract, acknowledged to be unallowable costs, with the further understanding that such commitment would only be undertaken so long as the contract remains in effect. Such commitment is further acknowledged to be separate from and unrelated to the fee.

Authorized Signer: [Signature]
Printed Name: TERRY CHALKER
Title: DIRECTOR, CONTRACTS
Organization: BWXT SERVICES, INC.
Date: 5-24-06
Commitment Area: Mission Support

Commitment: BWXT Safety Summit

Resource Provider: BWXT and the University of Chicago (Partnership)  
Location: Argonne Guest House and Argonne National Laboratory

Description:
BWXT will host its 2007 Annual Safety Summit at the Argonne National Laboratory. In 2006, this was attended by eighty BWXT officials all who hold either senior management or key safety positions at our various DOE sites or at our corporate headquarters. The core agenda of this meeting will span two full days and will include a tour of the key nuclear facilities at Argonne and briefings by Argonne nuclear operations and safety officials. Briefings will focus on the progress being made to implement the Corrective Action Plan with a comment and discussion period between BWXT and Argonne officials. BWXT officials will also have the opportunity to review the activities of the Center of the Advanced Fuel Cycle Initiative at Argonne and safety issues related to GNEP. The title of the Summit will be “Safe Nuclear Operations – Today and for the Future.”

Monetary Value:  
$54,500 (based on a conservative estimate of 50 attendees).  
$18,000 for 3 days lodging & meals for 50 people at Guest House  
$38,000 for the Labor Costs of 50 people for 4 extra hours to be focused on Argonne safety issues only (average rate of $180 per hour).

Argonne/DOE Benefits:
Provide the opportunity for Argonne officials to have direct access to top BWXT Corporate and Nuclear Safety Officials with strong knowledge and experience with nuclear safety issues. As GNEP will be a specific focus of the summit, Argonne and DOE will also be able to expand their base of knowledge that they can use to address key safety issues as the program is implemented. The Summit will also provide the opportunity to heighten the image and profile of Argonne as a site that puts safety first – both now and in the future.

Date Provided: Spring 2007  
Related Liability: None  
Resource Manager: Rick Loving, Director of Administration, BWXT

Argonne Integration:
Nuclear Operations, ESHQ and Applied Science

Other Issues:
None

The cost to provide this corporate commitment is, for the purposes of this contract, acknowledged to be unallowable costs, with the further understanding that such commitment would only be undertaken so long as the contract remains in effect. Such commitment is further acknowledged to be separate from and unrelated to the fee.

Authorized Signer:  
Printed Name: TERRY CHALKER  
Title: DIRECTOR, CONTRACTS  
Organization: BWXT SERVICES, INC.  
Date: 5-24-06
Commitment Area: Business and Operations

Commitment: Digital Laboratory Advisory Support

Resource Provider: BWXT  Location: Argonne National Laboratory

Description:
BWXT will provide our Director of Information Technology and Telecommunications to advise Argonne National Laboratory on issues related to the creation of the Digital Laboratory (DL). Particular attention will be given to integrating and optimizing business information systems management into DL. His services will be provided during the first year of the contract. Special attention will be given to applying our experience and our lessons learned in implementing SAP at our corporate HQ and at the DOE sites we manage.

Monetary Value: $13,000  Basis of Estimate: Labor and travel cost = $13,000

Argonne/DOE Benefits:

DOE wants Argonne and its laboratories to be managed efficiently and for their information support systems to be business like and "state of the art." BWXT knows how to implement new business information management systems at DOE sites and can help Argonne avoid any pitfalls. BWXT support also ensures that the system developed for business information management is compatible with all DOE internal reporting requirements.

Date Related Liability: Resource Manager:
Provided: None  John Knowles, Chief of Information Technology and Telecommunications
Upon award

Argonne Integration:
- Remy Evard, Chief Information Officer

Other Issues:
- None

The cost to provide this corporate commitment is, for the purposes of this contract, acknowledged to be unallowable costs, with the further understanding that such commitment would only be undertaken so long as the contract remains in effect. Such commitment is further acknowledged to be separate from and unrelated to the fee.

Authorized Signatures:

Printed Name: TERRI CHALKER
Title: DIRECTOR, CONTRACTS
Organization: BWXT SERVICES, INC.
Date: 5-24-06
Commitment Area: Education

Commitment:
Provide Scholarships for Next Generation Argonne National Laboratory Scientists and Engineers

Resource Provider: BWXT
Location: Sponsoring Universities or at Argonne

Description:
Provide scholarship and/or internship monies to the Roy Post Foundation that would select and provide a monetary match to promising and deserving students who want to pursue careers in nuclear materials management. The target group would be students at the founding and participating universities of the Center for the Advanced Nuclear Fuel Initiative (ACFI). This includes the University of Chicago and the Big 10 Universities.

Monetary Value: $50,000
Basis of Estimate: $5,000 from BWXT matched by $5,000 in monies from the Roy Post Foundation on an annual basis for the next five years

Argonne/DOE Benefits:
DOE wants to infuse new talent into its National Laboratories and to create the next generation of scientists and engineers to take on important positions. In particular, it wants to stimulate the interest of science and engineering students in pursuing careers in areas that can benefit its initiatives associated with the Global Nuclear Energy Program (GNEP) and the safe management of nuclear materials. DOE would also like to see contractors increase their efforts to expand their ranks with junior talent.

Date Provided: Upon award
Related Liability: None

Resource Manager:
Chuck Bernhard, Senior Business Development Manager, BWXT Services, Inc.

Argonne Integration:
Harold Myron, Director of Education Programs

Other Issues:
None

The cost to provide this corporate commitment is, for the purposes of this contract, acknowledged to be unallowable costs, with the further understanding that such commitment would only be undertaken so long as the contract remains in effect. Such commitment is further acknowledged to be separate from and unrelated to the fee.

BWXT Services, Inc.

Roy Post Foundation

Authorized Signer: [Signature]
Printed Name: TERREY CHALKER
Title: DIRECTOR, CONTRACTS
Organization: BWXT SERVICES, INC.
Date: 5-24-06

Authorized Signer: [Signature]
Printed Name: SCHLESSER BERMAN
Title: PRESIDENT
Organization: ROY POST FOUNDATION
Date: 5-24-06
May 25, 2006

Thomas F. Rosenbaum
John T. Wilson Distinguished Service Professor of Physics
Vice President for Research and for Argonne National Laboratory
The University of Chicago
Administrative Building 502
5801 S. Ellis Avenue
Chicago, Illinois 60637-2785

Dear Tom:

Northwestern University is pleased to commit funding in support of the Argonne National Laboratory management contract. We believe that the University of Chicago's retention of this contract, in conjunction with Fermi National Engineering Group and BWCT, is critical to the advancement of science and technology in the Department of Energy. We expect that this collaboration will be enriched by Northwestern's participation, and that Northwestern's faculty and students will, in turn, benefit greatly by the interaction with colleagues at Argonne.

In support of this effort, Northwestern University will commit to $2,225,000 in funding over the five years, as follows:

Joint Research Areas, Joint Institutes and Joint Appointments = $2,000,000 over five years

These funds will provide the Laboratory Director with flexibility to develop or refine progress in promising programmatic areas. Such funds will also allow the Laboratory to pursue other lines of work which may complement the Department of Energy mission and create new ventures and discoveries that further push the frontiers of science and technology. It is envisioned that these areas may include, but not be limited to: Nanoscience, Energy and Environment, and Complexity Studies. Northwestern's contribution will consist of half-time salaries for joint appointments, set-up and seed funding for joint projects, and hosting of workshops and other events.

Northwestern Need-based Scholarships = $200,000

These funds are expected to assist the Laboratory in the recruitment and retention of promising scientists and investigators by offering access to an additional benefit. Northwestern will award up to $40,000 per year in needs-based scholarship funding to students Latina and Alta.

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children of Argonne employees who have been accepted into undergraduate programs at Northwestern University.

Council on Education and Outreach — $25,000

Northwestern will contribute $5,000 per year toward the University of Chicago’s Council on Education and Outreach. We will hold a seat on the Council and work toward expanding Argonne’s education and outreach activities into the Evanston, IL area.

These funds will be available upon award of the contract, and are expected to be provided in approximately equal increments over the five year period. The Vice President for Research will be the Resource Manager for these funds.

Sincerely,

C. Bradley Moore
Vice President for Research
Professor of Chemistry

cc: Lawrence B. Davis, Provost, Northwestern University
May 23, 2006

Professor Tom Rosenbaum
Vice President for Research and Argonne National Laboratory
University of Chicago
5801 South Ellis Avenue
Chicago, IL 60637-2785

Dear Vice President Rosenbaum:

The University of Illinois at Urbana-Champaign (Illinois) is very pleased to be a participant in the Science Policy Council and a member of the University of Chicago Board of Governors for Argonne National Laboratory under the leadership of the University of Chicago. We look forward to collaborating with you in managing one of the world’s foremost laboratories, and see many opportunities for synergy between Argonne and Illinois programs in energy, materials science, computer science, bioscience, and environmental sustainability. In support of the proposal to the Department of Energy, Illinois submits the following commitment to Argonne.

Argonne presents unique research prospects for Illinois graduate students and postdoctoral research associates. Thus we will provide $125,000 per year to support the participation of research assistants and postdocs in collaborations between Illinois faculty and Argonne researchers. A small Argonne Collaboration Committee composed of members of our faculty and Argonne researchers would identify these postdocs and allocate resources.

Argonne and UIUC share an economic development mission that extends across Illinois, the Midwest, and the nation. As the senior administrator on our campus responsible for corporate relations, I will work with Argonne to support collaborative research with industry, along with technology transfer and commercialization activities.

- Targeting corporations that would benefit from three-way R&D collaborations, with Argonne and Illinois.
- Promoting Argonne involvement in shared research clusters within our Research Park.
- Involving Argonne staff in Illinois’ efforts to streamline research contracts and intellectual property arrangements with industry.

Telephone 217-333-5224 • fax 217-333-6846

This page not counted as part of the 250 page limitation.
In order to build on this synergy and to facilitate relationships between our institutions and with researchers at Argonne, I will be pleased to continue my service on Argonne's Science Policy Council. Together with our campus research community, I am eager to work together with you toward the continued success of this highly valued national resource.

Sincerely,

[Signature]

Charles F. Zukoski
Vice Chancellor for Research

Cc: D. Chicoine
    E. Gridagon
    R. Heenan
    L. Kenobi
    S. Manning
    R. Rosner
President Don Randel
President
The University of Chicago
Administration Building
5801 S. Ellis Avenue, 502
Chicago, IL 60637

Dear Don:

I am writing to affirm the full support of the University of Illinois to the University of Chicago as a member of the University of Chicago Board of Governors for Argonne National Laboratory. We are pleased to join you in this endeavor.

The University’s Chicago campus and Urbana-Champaign campus, which are involved in the Science Policy Council with the University of Chicago, will provide separate, campus-specific letters committing their support. My letter complements the campuses’ commitments with details on University support.

First, to ensure an effective and integrated partnership between the University of Illinois and Argonne in the pursuit of excellence in scientific inquiry, creativity and innovation, the University’s Vice President for Technology and Economic Development and I are committed to provide high level leadership to the management and strategic direction of Argonne by continued service on the Board of Governors. In addition, the Vice Chancellors for Research at the University’s Urbana-Champaign campus and Chicago campus agree to continue their service on Argonne’s strategic Science Policy Council.

Second, the University of Illinois is particularly excited about Argonne’s efforts in encouraging more young men and women and, in particular, more people of color to make careers in science and technology. These are goals strongly shared by the University of Illinois. Consequently, I am pleased to commit $50,000 per year for the next five years to Argonne’s Counseling, Education and Outreach. The University of Illinois looks forward to working with others on the Council.

May 24, 2006
President Randel
May 24, 2006
Page 2

Finally, and importantly, the University of Illinois is committed to working with Argonne to establish collaborative and complementary world-class technology transfer and commercialization activities. We share the mission to broaden and strengthen the growth and development of the economies of Illinois, the Midwest, and the nation through the effective management, transfer, and commercialization of Argonne and University-based technologies and intellectual properties. Our activities will include:

- Joint strategies to foster rapid technology evaluation and deployment to market through collaboration by University of Illinois and Argonne technology licensing offices.
- Unified efforts to attract the capital required for investment in emerging technologies including the deployment of the resources of Illinois VENTURES, LLC, a University of Illinois-owned company, providing business development services and early-stage capital to high technology start-up companies.
- Commitments to new ventures that create real value, home new business development, and positively impact the creation of high-paying jobs, including the effective use of University of Illinois business incubators - the Research Center in the Chicago Technology Park and EnterpriseWorks in the Research Park at UUIC.

I look forward to partnering with you to guide the future of Argonne National Laboratory, an important national resource.

Sincerely,

[Signature]

cc: H. Bliesner
    D. Cistron
    E. Gilsenan
    R. Herzman
    L. Kordt
    S. Manning
    M. Tannen
    C. Zolkoski

This page not counted as part of the 250 page limitation.
May 22, 2006

Tom Rosenbaum, Vice President for Research
Office of the VP for Argonne
University of Chicago
5801 S. Ellis Ave
Chicago, IL 60637

Re: Commitments by UIC Towards the Argonne Partnership

Dear Dr. Rosenbaum:

UIC is very pleased to be a participant in the Science Policy Council and a member of the University of Chicago Board of Governors for Argonne National Laboratory under the leadership of the University of Chicago. In support of the proposal to the Department of Energy UIC makes the following commitments to Argonne.

UIC has had a long history of joint appointments with Argonne, particularly in our Department of Physics. Over the next five years UIC commits to six new joint hires with Argonne, four in our College of Engineering and two in the College of Liberal Arts and Sciences. When the six joint hires are in place we anticipate that UIC will be spending $300,000 per year on our share of the salaries.

At present UIC is spending over $100,000 per year to directly support its research at the Advanced Photon Source, and we expect that support to continue in the next five years. UIC also plans to commit new resources to collaborative research projects with Argonne. As you know there have been a number of joint meetings between Argonne and UIC staff and faculty discussing collaborations in such areas as data mining, bioinformatics, catalyst development, sensors, emergency response, transportation, and energy research including alternative fuels development. We anticipate that by the end of the next five years UIC will be spending an additional $100,000 per year to support graduate students, postdoctoral fellows and faculty who are working at Argonne in collaborative projects.

We also expect to be part of several joint institutes and/or centers in collaboration with Argonne. One that is just underway is the expansion of the UIC National Center for Data Mining (NCDM) directed by Professor Robert Grossman into a center called the Consortium for Data Analysis Research that initially includes UIC, Chicago, and Argonne as “Founding Institutions”, and Northwestern University and Toyota Technological Institute at Chicago as “Member Institutions,” but is expected to expand to include other institutions and organizations. The purpose of the Consortium is to serve as a focus point for collaborative research, technology

UIC

Phone (312) 996-4995
and knowledge transfer, educational activities, and related efforts in data mining, data analytics, data intensive computing and related areas for faculty, students, and staff at the consortium institutions, and participating partners elsewhere. Professor Grossman estimates that UIC will expend $60,000 in salaries on this Consortium in the first year and approximately $90,000 per year in subsequent years.

UIC is also committed to making our special facilities available to Argonne scientists. Two that should be of special interest are the Biologic Resources Laboratory (BRL) and the Research Resources Center (RRC). The BRL houses the UIC Animal Care and Use Program, which has had continual Association for the Assessment and Accreditation of Laboratory Animal Care (AAALAC) accreditation since 1970. It consists of 137,000 sq. ft. of animal housing space. This includes a large centralized animal facility containing 110,000 sq. ft. and 10 satellite facilities. The Program is overseen by a staff of five board certified veterinarians (American College of Laboratory Animal Medicine), seven veterinary technicians and 32 animal care technicians. Together the staff provides support to 275 investigators and 550 research protocols and veterinary and husbandry care to approximately 17,500 animals including mice, rats, dogs, swine and nonhuman primates. Program strengths include the following:

(1) The UIC Program has the largest nonhuman primate colony in the Chicago metropolitan area with a current census of 325 animals (includes baboons and four macaque species) and a maximum capacity of 425 animals. UIC has maintained a large colony for over 35 years and the staff has experience with both New and Old World nonhuman primates.
(2) The UIC Program has an operational BSL-3 facility for nonhuman primate infectious disease studies.
(3) The UIC Program has a full service Good Laboratory Practices (GLP) compliant diagnostic laboratory capable of running a complete array of hematology and clinical chemistries.
(4) The BRL is compliant with GLPs and has supported numerous GLP studies through the UIC Toxicology Research Laboratory for various organizations including industry, NIH, EPA and DOD.
(5) The UIC Program has a specific pathogen free transgenic mouse barrier facility capable of holding 20,000 mice.
(6) The UIC Program has a large centralized surgical program which includes radiology for rabbits, dogs, swine and nonhuman primates.
(7) Users of the UIC Program also have access to various UIC hospital resources including MRI, CT and a linear accelerator.

The RRC has been providing core support for research at UIC for decades. It provides equipment, training, and a variety of research support services for campus investigators. At present its research support services consist of confocal microscopy, flow cytometry, electron and Raman microscopy, NMR spectroscopy and micro-imaging, mass spectrometry, a DNA laboratory, a genomics facility, a protein laboratory, a proteomics and informatics service facility, a macromolecular structure facility, a small molecule X-ray diffraction facility, a transgenic production service, electronic and machine shops, a computing support group and a storeroom operation. In the past few years the RRC has expanded markedly, due in part to the increase in the interest in and need for, biotechnology services and due in part to increased demand for other service. A related organization is the UIC Center for Structural Biology.
(CSB), which has three high-field NMRs (600 MHz, 800 MHz, and 900 MHz) devoted to the
determination of structures of molecules of biological interest including proteins.

The charge to Argonne users of the BRL, RRC or CSB will be the same as to faculty at
local universities such as the University of Chicago or Northwestern University. This charge is
much less than what industrial users are charged.

Finally, we are aware that President White has pledged funding for the Argonne Council
on Education and Outreach on behalf of the University of Illinois system. We at UIC look
forward to working on that Council with the other members.

Sincerely,

R. Michael Tanner
Provost

Eric A. Gislason
Vice Chancellor for Research

cc: J. White
    D. Chicoine
    C. Zukoski
    C. B. Moore
APPENDIX E

KEY PERSONNEL

Laboratory Director
Paul Kearns - Interim

Deputy Laboratory Director for Science
Matthew Tirrell

Deputy Laboratory Director for Operations/
Chief Operating Officer
John Quintana - Interim

Associate Laboratory Directors:

Computing, Environment & Life Sciences
Rick Stevens

Energy and Global Security
Jeffrey Binder

Photon Sciences
Stephen Streiffer

Physical Sciences and Engineering
Hendrik Weerts

Director, Environmental, Safety and Quality
Assurance
Elizabeth Dunn

Director, Facilities Management & Services
Gail Stine

Chief Financial Officer
Jeffrey Purnell

Chief Information Officer
Stuart Hannay

General Counsel
Glenn McKeown - Interim
PART III - SECTION J

APPENDIX F

RESERVED
PART III - SECTION J

APPENDIX G

PURCHASING SYSTEM REQUIREMENTS

This Appendix and Clause I.135, “Contractor Purchasing System”, sets forth DOE requirements applicable to the Purchasing System established under the Contract for the management of the Argonne National Laboratory.

Subcontracts Not Binding on DOE

As used herein, the term “subcontracts” includes subcontracts, purchase orders, letter agreements, basic ordering agreements, consultant agreements, micropurchases, EDI and FACNET transactions, and lower tier subcontracts under cost-type subcontracts (in an unbroken cost-type chain) that represent costs properly chargeable to the Prime Contract.

All applicable subcontracts shall be made in the name of the Contractor, shall not bind or purport to bind the Government, shall not relieve the Contractor of any obligation under the Prime Contract (including, among other things, the obligation to properly supervise and coordinate the work of subcontractors), and shall contain such provisions as are required by this Contract or as DOE may prescribe based on Federal statutes and regulations, or DOE Orders and Policies.

DOE Approval

Prior DOE written approval is required for the following actions:

1. Laboratory award of any subcontract having a value of equal to or greater than $10,000,000.00, or any subcontract modification which will cause the value to equal or exceed $10,000,000.00.

2. Except as otherwise expressly provided or directed, in writing, by DOE Patent Counsel with notification to the Contracting Officer, actions which involve any one of, or combination of, the following intellectual property matters:
   a. Acquisition of software by negotiated lease or license;
   b. Purchase of patents or patent license rights, including the payment of royalties and permits, or license fees;
   c. Recognition of proprietary rights, including the recognition of technical data as trade secrets; or,
   d. Any restriction of DOE’s use of data procured under a subcontract.
3. Inter-Contractor Purchases (ICPs) expected to exceed $1,000,000,00.

4. The purchase of utilities defined as: steam, gas, electricity, telephone lines, water and sewage.

5. Laboratory Procurement Policies and Procedures

   All additions to, modifications or deletions of, Laboratory Procurement Policies and Procedures which result in substantive changes thereto shall be submitted to DOE for approval prior to implementation.

The above approval requirements do not eliminate any other requirement for review, concurrence, or approval of other proposed actions specified in the subject contract or DOE’s right to require consent on any single or class of purchasing actions selected for special surveillance.
FY 2018 SMALL BUSINESS SUBCONTRACTING PLAN

CONTRACTOR: UChicago Argonne, LLC  
(Operator of Argonne National Laboratory)

ADDRESS: 9700 South Cass Avenue  
Argonne, Illinois 60439-4873

CONTRACT NUMBER: DE-AC02-06CH11357  
ITEM/SERVICE: Operation of Multi-Purpose National Laboratory

TOTAL AMOUNT OF CONTRACT:  
(INCLUDING OPTIONS)

PERIOD OF CONTRACT PERFORMANCE: 10/01/17 - 9/30/18  
(DAY, MONTH, AND YEAR)

1. TYPE OF PLAN (please check one)

☑ Individual Contract Plan - Individual Contract Plan, as used in this subpart, means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

☐ Master Plan - Master Plan, as used in this subpart, means a subcontracting plan that contains all of the required elements of the individual plans, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

☐ Commercial Products Plan - Commercial Plan, as used in this subpart, means a subcontracting plan that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line). The contractor must provide a copy of the approved plan. NOTE: A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items.

2. GOALS

State separate dollar and percentage goals for small business (including Alaska Native Corporations (ANCs) and Indian Tribes), small disadvantaged business (including ANCs and Indian Tribes), women-owned, HUBZone, veteran-owned and service-disabled veteran-owned small business concerns, as subcontractors.
a. Total estimated dollar value of all planned subcontracting, i.e., with all types of concerns eligible for small business subcontracting under this contract is $235,000,000.00.

b. Total estimated dollar value and percent of planned subcontracting with small business concerns, includes small business (including ANC's and Indian Tribes), small disadvantaged, women-owned, HUBZone, veteran-owned and service-disabled veteran-owned small business concerns: (% of "a") $94,000,000 and 40%.

c. Total estimated dollar value and percent of planned subcontracting with small disadvantaged business (including ANC's and Indian Tribes): (% of "a") $11,750,000.00 and 5%.

d. Total estimated dollar value and percent of planned subcontracting with women-owned small business: (% of "a") $11,750,000.00 and 5%.

e. Total estimated dollar value and percent of planned subcontracting with System for Award Management (SAM) certified HUBZone small business: (% of "a") $7,050,000.00 and 3%.

f. Total estimated dollar value and percent of planned subcontracting with veteran-owned small business: (% of "a") $7,050,000.00 and 3%.

g. Total estimated dollar value and percent of planned subcontracting with service-disabled veteran-owned small business: (% of "a") $7,050,000.00 and 3%.

h. Total estimated dollar value and percent of planned subcontracting with large business: (% of "a") $141,000,000.00 and 50%.

Provide a description of all the products and/or services to be subcontracted under this contract, and indicate the types of business supplying them, [i.e., SMALL BUSINESS (SB) (including ANC's and Indian Tribes), SMALL DISADVANTAGED BUSINESS (SDB) (including ANC's and Indian Tribes), WOMEN-OWNED SMALL BUSINESS (WOSB), HUBZONE SMALL BUSINESS (HUBZ), VETERAN-OWNED SMALL BUSINESS (VOSB), SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS (SDV), and LARGE BUSINESS (LARGE)].

October 2, 2017
(Check all that apply)

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In accordance with FAR 19.502-2, awards greater than $3,500 and less than the simplified acquisition threshold ($150,000) to large business will include documentation which supports the decision to award to other than a small business. Preference will be given to small business awards for purchases between $3,500 and $150,000 awarded through small purchase/simplified acquisition procedures where there is a reasonable expectation that bids, competitive as to price, quality, and delivery, will be obtained from two or more responsive small business concerns.

Argonne will for the acquisition of construction estimated to cost $3.5 million or less (where there is a reasonable expectation that bids, competitive as to price, quality, and delivery, will be obtained from two or more responsive small business concerns), solicit and award to small, small disadvantaged, small women-owned, and small disadvantaged 8(a) businesses to the fullest extent practicable.

To further facilitate Argonne's Small Business Program, Argonne will, without further documentation to the file, and based upon its unilateral decision, utilize the option of

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making awards without competition: (1) up to the simplified acquisition threshold ($150,000) to small business concerns (including ANC’s and Indian Tribes) in accordance with the Department of Energy Small Business Program Overview; Chapter 2, Section D (Discretionary Set-Asides) dated 12/10; (2) in accordance with FAR 19.805-1(2) for purchases valued at: (a) $6.5 million or less for manufacturing North American Industry Classification System (NAIC) codes and $4 million or less for all other acquisitions to registered Small Business Administration 8(a) Pilot Program firms; or (b) in accordance with FAR 19.1306(2) $6.5 million or less for HUBZone small business within North American Industry Classification System (NAIC) codes for manufacturing or $4 million or less for HUBZone small business within any other NAIC codes; and (3) in accordance with FAR 19.1406(2) sole source awards to service-disabled veteran-owned small business concerns for $6 million or less for a requirement within the NAICS codes for manufacturing; or $3.5 million for a requirement within any other NAICS codes.

To the extent practicable, Argonne shall accelerate payments to small business contractors (including ANC’s and Indian Tribes) with the goal of making payments within 15 days, when a proper invoice and all proper documentation, including acceptance, is received by the Argonne accounts payable office.

Argonne will utilize HUBZone set-asides and HUBZone sole source methodologies in the award of subcontracts provided the acquisition meets requirements of FAR 19.1305 and FAR 19.1306(a) and in accordance with this plan and existing procurement practices.

Argonne’s Mentor-Protégé Program is managed and administered by Argonne’s Procurement Department through its Small Business Program. According to the Mentor-Protégé Agreement, Argonne may award noncompetitive subcontracts of any dollar value to its Protégés recognized under the DOE Mentor-Protégé Program subject to the best commercial practices and procedures required by DEAR 970.4402-2(d). Further, Argonne may award noncompetitive subcontracts to a Protégé of another DOE Mentor contractor if those awards are made at fair market prices.

See paragraph 7.C. for documentation of awards to large business with a value of $150,000 or more.

h. The following method was used in developing subcontract goals:

1) Small business goals were based on prior year’s experience, perceived changes in the type of acquisitions to be completed, known increases and decreases in various program areas as reported by the various Laboratory divisions, projected construction projects, the Department of Energy Small Business Program Overview; Chapter 2, Section D (Discretionary Set-Asides) dated 12/10; that confirms authorized purchases valued up to the simplified acquisition threshold ($150,000) on a sole source basis to small business (including ANC’s and Indian Tribes), the impact of Automated Material Order System (AMOS) in filling the
needs of the Laboratory, consideration of certified HUBZone small business concerns, and the projected volume of acquisitions.

2) Small disadvantaged business (SDB) subcontracting activity was measured in terms of past annual dollar expenditures, percent of annual dollar purchases from SDB concerns, total number of SDB vendors doing business or desiring to do business with ANL, impact of AMOS contracts, use of FSS contracts, and a self-perception of the potential success of our SDB program.

3) In a similar manner the women-owned small business goal was determined based on last year's experience.

4) HUBZone goals are contingent upon availability of viable certified concerns located primarily in the Chicago metropolitan area, but considering others in the United States as well.

5) Veteran-owned small business and service-disabled veteran-owned small business opportunities are predicated on a reasonable expectation that bids, competitive as to price, quality, and delivery will be obtained from two or more responsive veteran-owned and/or service-disabled veteran-owned small business concerns.

i. Indirect costs have been _____ / have not been ____ X ____ included in the dollar and percentage subcontracting goals stated above. (Please check one.)

3. PROGRAM ADMINISTRATOR

Name, title, and position within the Laboratory structure, and the duties and responsibilities of the employee who will manage the contractor's subcontracting program.

NAME: JOSEPH A. INGRAFFIA
TITLE: MANAGER, ARGONNE PROCUREMENT
ADDRESS: 9700 SOUTH CASS AVENUE
ARGONNE, IL 60439-4873
TELEPHONE: (630)-252-3640

Duties: Has general overall responsibility for the contractor's subcontracting program, i.e., developing, preparing, and executing subcontractor plans and monitoring performance relative to the requirements of this particular plan. These duties include, but are not limited to, the following activities:

a. Developing and promoting Laboratory-wide policy initiatives that demonstrate Argonne's support for awarding contracts and subcontracts to small business (including ANCs and Indian Tribes), small disadvantaged business (including ANCs and Indian Tribes), women-owned small business, HUBZone small business, veteran-owned small business and
service-disabled veteran-owned small business and assure that such small business concerns are included on the services they are capable of providing;

b. Ensuring periodic rotation of potential subcontractors;

c. Ensuring that procurement "packages" are designed to permit the maximum possible participation of small business (including ANC's and Indian Tribes), small disadvantaged business (including ANC's and Indian Tribes), women-owned small business, HUBZone small business, veteran-owned small business and service-disabled veteran-owned small business within Laboratory policies and procedures;

d. Facilitating the utilization of various sources for the identification of small business (including ANC's and Indian Tribes), small disadvantaged business (including ANC's and Indian Tribes), women-owned small business, HUBZone small business, veteran-owned small business and service-disabled veteran-owned small business such as the System for Award Management (SAM) (https://www.sam.gov/), the DOE's Acquisition Forecast, the Small Business Administration Dynamic Small Business Search, VetBiz Registry database, the U.S. Department of Commerce Minority Business Development Agency, SME Toolkit which includes members of the U.S. Advisory Council including the: Asian American Business Development Center, Council of the Better Business Bureau, Native American Chamber of Commerce, New York African American Chamber of Commerce, the US Hispanic Chamber of Commerce, Women's Business Enterprise National Council, and the facilities of local small business, minority and women associations, and contact with federal agencies' small business program managers;

e. Overseeing the establishment and maintenance of contract and subcontract award records;

f. Attending or arranging for the attendance of Laboratory personnel at Small Business Opportunity Workshops, Minority and Women Business Enterprise Seminars, Trade Fairs, Procurement Conferences, etc.;

g. Ensuring small business (including ANC's and Indian Tribes), small disadvantaged business (including ANC's and Indian Tribes), women-owned small business, HUBZone small business, veteran-owned small business and service-disabled veteran-owned small business are made aware of subcontracting opportunities as well as how to prepare responsive bids to the Laboratory;

h. Conducting and arranging of training for Procurement personnel regarding the intent and impact of Public Law 95-507 on procurement procedures;

i. Monitoring the Laboratory's performance and making any adjustments necessary to achieve the subcontract plan goals;

j. Preparing and submitting required subcontract reports on a timely basis;
k. Coordinating the Laboratory's activities during the conduct of compliance reviews by federal agencies;

l. Reviewing solicitation formats to remove statements, clauses, etc., which may tend to restrict or prohibit small business (including ANC's and Indian Tribes), small disadvantaged business (including ANC's and Indian Tribes), women-owned small business, HUBZone small business, veteran-owned small business or service-disabled veteran-owned small business participation where possible;

m. Ensuring that the reasons for not selecting low bids submitted by small business (including ANC's and Indian Tribes), small disadvantaged business (including ANC's and Indian Tribes), women-owned small business, HUBZone small business, veteran-owned small business and service-disabled veteran-owned small business are documented;

n. Ensuring the establishment and maintenance of records of solicitations and subcontract award activity;

o. Ensuring that historically Black colleges and universities and minority institutions shall be afforded maximum practicable opportunity (if applicable);

p. Assisting program managers as early as possible in the development cycle of major system acquisitions and system programs pertaining to the Small Business program; and

q. Advising potential suppliers as to how they can obtain information about business opportunities at ANL and briefing the Procurement Manager and the Chief Financial Officer at least twice yearly concerning the status of small business (including ANC's and Indian Tribes), small disadvantaged business (including ANC's and Indian Tribes), women-owned small business, HUBZone small business, veteran-owned small business and service-disabled veteran-owned small business utilization in relation to goals and objectives established.

r. Overseeing the Lab's Mentor-Protégé Program and ensuring that we have a secured agreement with at least one small business (protégé) in accordance with the requirement identified in our Prime Contract with Department of Energy.

4. EQUITABLE OPPORTUNITY

The contractor agrees to ensure that small business (including ANC's and Indian Tribes), small disadvantaged business (including ANC's and Indian Tribes), women-owned small business, HUBZone small business, veteran-owned small business and service-disabled veteran-owned small business will have an equitable opportunity to compete for subcontracts. These efforts include, but are not limited to, the following activities:

a. Outreach efforts to obtain sources

October 2, 2017
1) Contacting small business (including ANC's and Indian Tribes), small disadvantaged business (including ANC's and Indian Tribes), women-owned small business, HUBZone small business, veteran-owned small business and service-disabled veteran-owned small business trade associations, such as:

- Local Small Business Development Centers
- Local Procurement Technical Assistance Centers
- Chicago Minority Business Development Center
- National Association of Women Business Owners
- Illinois Women and Minority Business Assistance
- The Blue Book of Building and Construction

2) Contacting business development organizations such as:

- U.S. Department of Veterans Affairs (VetBiz.gov)
- U.S. Department of Commerce Minority Business Development Agency
- Asian American Business Development Center
- Latinos in Information, Sciences and Technology
- National Black Chamber of Commerce
- Native American Chamber of Commerce
- The National Center for American Indian Enterprise Development
- U.S. Hispanic Chamber of Commerce
- Illinois Hispanic Chamber of Commerce
- Women's Business Enterprise National Council
- National Minority Supplier Development Council

3) Attending small business (including ANC's and Indian Tribes), small disadvantaged business (including ANC's and Indian Tribes), women-owned small business, HUBZone small business, veteran-owned small business and service-disabled veteran-owned small business procurement conferences and trade fairs, as budget permits such as:

- Chicago Business Opportunity Fair
- Midwest Small Business Expo
- U.S. Department of Energy Small Business Conference, Expo & Matchmaking Events
- Annual Joint Industry/SBA Procurement Conferences
- Minority Enterprise Development Week (MED WEEK)
- Chicago's ELITE service disabled veteran owned business network

4) Utilizing internet and other media avenues to encourage new sources when funds are available to do so.

b. Internal efforts to guide and encourage Procurement personnel.

1) Presenting workshops and training programs;

2) Establishing, maintaining and using small business (including ANC's and Indian Tribes), small disadvantaged business (including ANC's and Indian Tribes),
women-owned small business, HUBZone small business, veteran-owned small business and service-disabled veteran-owned small business source lists, guides, and other data for soliciting subcontracts, such as:

- SBA Small Business Dynamic Search Engine
- National Directory of Minority-Owned Business Firms
- Business Research Services 8(a) Sources
- MWBE.com - National Resource and Referral Site for Minority and Women
- City of Chicago Certification and Compliance System MWBE Directory
- State of Illinois Bureau of Central Management Vendors Directory Search
- Federal Suppliers Guide

3) Monitoring activities to evaluate compliance with the subcontracting plan(s).

c. Small business (including ANC's and Indian Tribes), small disadvantaged business (including ANC's and Indian Tribes), women-owned small business, HUBZone small business, veteran-owned small business and service-disabled veteran-owned small business source lists, guides and other data identifying these types of business concerns will be maintained and utilized by buyers/subcontract specialists in sourcing suppliers.

5. FLOW-DOWN CLAUSE

The contractor agrees to include the provisions under FAR 52.219-8 entitled, "Utilization of Small Business Concerns," in all subcontracts in excess of the small purchase limitations that offer further subcontracting opportunities. All subcontractors, except small business concerns, that receive subcontracts (except those for commercial items) in excess of $700,000 ($1,500,000 for construction) of any public facility that offer further subcontracting opportunities must adopt and comply with a plan similar to the plan required by FAR 52.219-9, "Small Business Subcontracting Plan."

Such plans will be reviewed by comparing them with the provisions of Public Law 95-507, and assuring that all minimum requirements of an acceptable subcontracting plan have been satisfied. The acceptability of percentage goals shall be determined on a case-by-case basis depending on the supplies/services involved, the availability of potential small business (including ANC's and Indian Tribes), small disadvantaged business (including ANC's and Indian Tribes), women-owned small business, HUBZone small business, veteran-owned small business and service-disabled veteran-owned small business and prior experience. Once approved and implemented, plans will be monitored through the submission of periodic reports, and/or, as time and availability of funds permit, periodic visits to subcontractor's facilities to review applicable records and subcontracting program progress.

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6. **REPORTING AND COOPERATION**

The contractor gives assurance of (1) cooperation in any studies or surveys that may be required by the contracting agency or the Small Business Administration; (2) submission of periodic reports which show compliance with the subcontracting plan; (3) submission of semi-annual reports to provide acquisition forecast data for subcontracting opportunities; (4) submission into the Electronic Subcontracting Reporting System (eSRS) of the Individual Subcontracting Report (ISR) and Summary Subcontracting Report (SSR), in accordance with the requirements of the eSRS; and (5) ensuring that large business subcontractors with subcontracting plans agree to submit the Individual Subcontracting Report and Summary Subcontracting Report, in accordance with the requirements of the eSRS.

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<td>Apr 1 - Sept 30</td>
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<tr>
<td>Oct 1 - Sept 30</td>
<td>SSR</td>
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7. **RECORD KEEPING**

The following is a recitation of the types of records the contractor will maintain to demonstrate the procedures adopted to comply with the requirements and goals in the subcontracting plan. These records will include, but not be limited to, the following:

a. Argonne uses the System for Award Management (SAM) as its source for small business (including ANCs and Indian Tribes), small disadvantaged business (including ANC's and Indian Tribes), women-owned small business, HUBZone small business, veteran-owned small business and service-disabled veteran-owned small business concerns and maintains a list of the guides and other data identifying such vendors;

b. Organizations contacted in an attempt to locate small business (including ANC's and Indian Tribes), small disadvantaged business (including ANC's and Indian Tribes), women-owned small business, HUBZone small business, veteran-owned small business and service-disabled veteran-owned small business sources;

c. On a contract-by-contract basis, records on all subcontract solicitations over $150,000, which indicate for each solicitation (1) whether small business concerns (including ANC's and Indian Tribes) were solicited, and if not, why not; (2) whether small disadvantaged business concerns (including ANC's and Indian Tribes) were solicited, and if not, why not; (3) whether woman-owned small business concerns were solicited, and if not, why not; (4) whether HUBZone small business concerns were solicited, and if not, why not; (5) whether veteran-owned small business and/or service-disabled veteran-owned small business concerns were solicited, and if not, why not; and (6) the reason for the failure of solicited small business (including ANC's and Indian Tribes), small disadvantaged business (including ANC's and Indian Tribes), woman-owned small business, HUBZone small
business, veteran-owned small business or service-disabled veteran-owned small business concerns to receive the subcontract award;

d. Records to support other outreach efforts, e.g., contacts with minority and small business trade associations, attendance at small and minority business procurement conferences and trade fairs;

e. Records to support internal guidance and encouragement, provided to buyers through (1) workshops, seminars, and training programs; and (2) monitoring of activities to evaluate compliance; and

f. On a contract-by-contract basis, records to support subcontract award data including the name, address, and business size of each subcontractor.

This subcontracting plan was submitted by:

SIGNATURE: [Signature]

TYPED NAME: Joseph A. Ingraffia

TITLE: Manager, Argonne Procurement

DATE PREPARED: October 2, 2017

PHONE NO.: 630-252-3640

This subcontracting plan was accepted by:

APPROVAL:

AGENCY:

TYPED NAME:

TITLE:

DATE APPROVED:

PHONE NO.:
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<td>The Safe Handling of Unbound Engineered Nanoparticles</td>
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<td>Import and Export of Category 1 and 2 Radioactive Sources and Aggregated Quantities</td>
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<td>01/19/93</td>
<td>Nuclear Reactor Safety Design Criteria</td>
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DOE Directives/List B
ATTACHMENT J.10

APPENDIX J

TREATIES AND INTERNATIONAL AGREEMENTS/WAIVED INVENTIONS

Applicable to the Operation of
Argonne National Laboratory

Contract No. DE-AC02-06CH11357
<table>
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<tr>
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<tr>
<td>1-6-97; exec 1-6-92</td>
<td>PO</td>
<td>Agreement relating to scientific and technical cooperation between the Government of the United States of America and the Government of the Republic of Korea.</td>
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<td>7-6-99; exec 7-6-94</td>
<td>IA and Department of State</td>
<td>Agreement between the Government of the United States of America and the Government of Estonia on science and technology cooperation.</td>
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<td>7-6-99; exec 7-6-94</td>
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<td>Agreement between the Government of the United States of America and the Government of Latvia on science and technology cooperation.</td>
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<td>7-6-99; exec 7-6-94</td>
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<td>Agreement between the Government of the United States of America and the Government of the Republic of Lithuania on science and technology cooperation.</td>
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<td>Exec 6-14-96</td>
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<td>Memorandum of Understanding between the Department of Energy of the United States of America and the Ministry of Science and Technology of the Republic of Korea for a cooperative laboratory relationship.</td>
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<tr>
<td>Exec 12-11-96</td>
<td></td>
<td>Agreement between the Department of Energy and the Nuclear Power Engineering Corporation of Japan for cooperation in the field of research and development of light water reactor-associated technologies.</td>
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### Listing of Agreements Under the Aegis of: IAEA

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<td>ER</td>
<td>000233</td>
<td>Agreement among the European Atomic Energy Community, Japan, Russia and the United States on Cooperation in the Engineering Design Activities of the International Thermonuclear Experimental Reactor (ITER)</td>
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Office of Policy and International Affairs

All In Force Bilateral Agreements

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<td></td>
<td><strong>Comment:</strong> Energy Forecasting meeting was hosted by FE in Oct. of 97. Seminar on New Technologies for the Energy Sector was held in Buenos Aires in Dec 98. EERE has work on energy efficiency and renewable projects started under a statement of intent which was a precursor to this agreement. In Dec of 97 four priority areas of work were identified - energy efficiency, energy and environment, energy planning, and renewable energy by then Secretaries of Energy.</td>
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<td>62</td>
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<td><strong>Title:</strong> Implementing Arrangement between the Department of Energy of the United States of America and the National Atomic Energy Commission of the Argentine Republic for Technical Exchange and Cooperation in the area of Peaceful Uses of Nuclear Energy</td>
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<td><strong>Comment:</strong> Expanded sister lab arrangement supporting Article IV of the NPT. Existing annexes cover work in Molybdenum-99 production for LEU, boron neutron capture therapy, decontamination and decommissioning, and LEU advanced fuels.</td>
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<td><strong>Comment:</strong> In force as long as the Implementing Arrangement. Action sheets are under development.</td>
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<td><strong>Title:</strong> Project Annex 2 Cooperation in the Area of Boron Neutron Capture Therapy</td>
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<td><strong>Comment:</strong> In force as long as the Implementing Arrangement. Expert visits are underway.</td>
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<td><strong>Comment:</strong> Technical exchange visits.</td>
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Thursday, July 17, 2003

J-J-4
# All In Force Bilateral Agreements

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<td>Comment: In force as long as the Implementing Arrangement. Workshop was successfully held in fall of 98 at ANL.</td>
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<td>Comment: Remains in force as long as the Implement Arrangement. Action sheets are under development.</td>
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<td>Comment: Cooperate in research, development, testing, and evaluation of technology, equipment and procedures in order to improve nuclear material control, accountancy, verification, physical protection and advanced containment and surveillance technologies for international safeguards applications.</td>
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<td>Comment: Study radioactive and mixed waste management activities in such areas as: preparation and packaging; decontamination and decommissioning; surface and subsurface storage; characterization of geologic formations; disposal in geologic formations, etc.</td>
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**Country: **Australia

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**Country: **Austria

Thursday, July 17, 2003
### All In Force Bilateral Agreements

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| 65 | 337   | 9/18/1994  |          | Primary DOE          | None            |           |             | Energy Efficiency and Renewable Energy       | EE/Conservation and Climate Change
Title: *Memorandum of Understanding on Cooperation in Environmental Aspects of Energy Policy and the Protection of Global Climate*
Comment: Cooperate in areas of sufficient growth of energy supplies; energy efficiency and conservation measures and protection of the biosphere (climate change).

#### Country: Bangladesh

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| 501 | 450   | 12/15/1999 |          | Statement of Intent  | None            |           |             | Energy Research and Development              | SOI in Energy Cooperation
Title: *Joint Statement of Cooperation in Energy*
Comment:  

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| 514 | 460   | 2/11/1999  | 2/11/2004| Primary DOE          | None            |           |             | Information and/or Personnel Exchange        | Exchange of Energy Information
Comment: EIA will work with an agency designated by MEOMR to establish a reasonably balanced exchange of energy information.

#### Country: Botswana

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| 600 | 495   | 12/15/2000|          | Statement of Intent  | None            |           |             | Fossil Energy                                | Cooperation in the Field of Fossil Energy
Title: *Statement of Intent Between The Department of Energy of the United States of America and The Ministry of Mines, Energy and Water Affairs of the Republic of Botswana for Cooperation in the Field of Fossil Energy Technology*
Comment:  

#### Country: Brazil

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</table>
| 26  | 391   | 9/30/1996  |          | Statement of Intent  | None            |           |             | Fossil Energy                                | Clean Coal Technologies
Comment: Intention to cooperate between DOE, the State of Rio Grande do Sul, the State of Santa Catarina, The Sindicato National da Industria da Extracao do Carvao, Electrobras, and the Ministry of Mines and Energy of Brazil in clean coal technologies.

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<th>Subject</th>
<th>Brief Description</th>
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| 65  | 550   | 6/20/2003  | 6/20/2008| Primary DOE          | None            |           |             | Science and Technology                       | Cooperation in Nuclear Energy
Title: *Agreement between the Department of Energy of the United States of America and the Ministry of Science and Technology of the Federative Republic of Brazil Concerning Cooperation in Nuclear Energy*
Comment:  

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| 75 | 412   | 10/14/199  | 10/14/200| Primary DOE          | None           | None      | None        | Energy Research and Development Energy Technology | Title: Implementing Arrangement between the United States of America and the Federative Republic of Brazil for Cooperation in the Area of Energy Technology
|    |       |            |          |                      |                |           |             | Comment: Umbrella Agreement                  |                                                                                  |
| 279| 412   | 10/14/199  | 10/14/200| Secondary DOE        | 75 Primary DOE | Fossil Energy | None        | Annex 1 - Coal and Power Systems            | Title: Annex I to the Implementing Arrangement between the United States of America and the Federative Republic of Brazil for Cooperation in the Area of Energy Technology in the Field of Coal and Power Systems
|    |       |            |          |                      |                |           |             | Comment: Exchange experience and views on clean coal technologies, advanced power systems, advanced coal preparation, and environmental monitoring technologies and standards. |                                                                                  |
| 280| 412   | 10/14/199  | 10/14/200| Secondary DOE        | 75 Primary DOE | Energy Efficiency and Renewable Energy | None        | Annex 2 - Renewable Energy                  | Title: Annex II to the Implementing Arrangement between the United States of America and the Federative Republic of Brazil for Cooperation in the Area of Energy Technology in the Field of Renewable Energy
|    |       |            |          |                      |                |           |             | Comment: Collaboration on renewables resource assessment, integration in electric utility, policy analysis, and identification of opportunities for renewable energy in Brazil. |                                                                                  |
| 281| 412   | 10/14/199  | 10/14/200| Secondary DOE        | 75 Primary DOE | Energy Efficiency and Renewable Energy | None        | Annex 3 - Energy Efficiency                 | Title: Annex III - to the Implementing Arrangement between the United States of America and the Federative Republic of Brazil for Cooperation in the Area of Energy Technology in the Field of Energy Efficiency
|    |       |            |          |                      |                |           |             | Comment: Collaboration to increase energy, efficiency, promote global environmental protection, and stimulate the market in Brazil for energy efficiency goods and services. |                                                                                  |
|    |       |            |          |                      |                |           |             | Comment:                                                                                  |                                                                                  |
| 77 | 376   | 9/19/1995  | 9/19/2000| Primary DOE          | None           | None      | None        | International Safeguards Applications      | Title: Agreement between the United States Department of Energy and the National Nuclear Energy Commission of Brazil Concerning Research and Development in Nuclear Material Control, Accountancy, Verification, and Physical Protection, and Advanced Containment and Surveillance Technologies for International Safeguards Applications
|    |       |            |          |                      |                |           |             | Comment:                                                                                  |                                                                                  |
|    |       |            |          |                      |                |           |             | Comment: 5-year extension                    |                                                                                  |

**Country: Canada**
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<td>Comment: Collaborate in building energy simulation R&amp;D and information dissemination.</td>
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<td>Primary DOE</td>
<td>None</td>
<td>Energy Efficiency and Renewable Energy</td>
<td>Arrangement between DOE and Dept. of Natural Resources Canada</td>
<td>Title: Implementing Arrangement between the Department of Energy of the United States of America and the Department of Natural Resources Canada for Cooperation in the areas of Microgeneration and Community Energy Systems</td>
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<td>Comment:</td>
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<td>656</td>
<td>551</td>
<td>6/17/2003</td>
<td>6/17/2008</td>
<td>Primary DOE</td>
<td>None</td>
<td>Nuclear Energy</td>
<td>Nuclear Energy Research</td>
<td>Title: Implementing Arrangement between the United States Department of Energy and the Department of Natural Resources of Canada and Atomic Energy of Canada Limited for Collaboration in the area of Nuclear Energy Research</td>
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<td>Comment: Foreign Party for Atomic Energy of Canada Limited signed this agreement also on June 17, 2003.</td>
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<td>Energy Research and Development</td>
<td>Energy R&amp;D</td>
<td>Title: Memorandum of Understanding between the Department of Energy of the United States of America and the Department of Natural Resources of Canada on Collaboration in Energy Research and Development</td>
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<td></td>
<td></td>
<td>Comment: Establish wider areas of cooperation for mutual benefit</td>
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<td>2/1/2005</td>
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<td>Fossil Energy</td>
<td>DOE/NRCan Fuel Cells Implementing Arrangement</td>
<td>Title: Implementing Arrangement between the Department of Energy of the United States of America and the Department of Natural Resources Canada for Cooperation in the area of Fuel Cells</td>
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<td>Comment: Automatic Renewal after 5 years with written agreement of the participants.</td>
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<td>DOE/NRCan Fossil Fuels Implementing Arrangement</td>
<td>Title: Implementing Arrangement between Department of Energy of the United States of America and the Department of Natural Resources Canada for Cooperation in the area of Fossil Fuels</td>
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<td>Comment: Automatic renewal for 5 years with written agreement of the participants.</td>
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<td>Gov't to Gov't S&amp;T</td>
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Country: **Chile**

**Title:** Project Annex I - Weyburn CO2 Sequestration Project under the Implementing Arrangement Between the Department of Energy of the United States of America and the Department of Natural Resources Canada for Cooperation in the Area of Fossil Fuels

**Comment:**

Country: **China**

**Title:** Agreement between the Government of United States of America and the Government of People's Republic of China on Cooperation in Science and Technology

**Comment:**

Country: **Chile**

**Title:** Statement of Intent between the United States Department of Energy and the Department of Mines and Resources on Biennial Biomass Conference of Americas

**Comment:** Collaborate in a biennial conference to present the latest results in biomass energy research and development.

Country: **Chile**

**Title:** Statement of Intent for Sustainable Development Cooperation and Joint Implementation of Measures to Control Emissions of Greenhouse Gases Between the Department of Energy of the United States of America and the National Energy Commission of Chile

**Comment:** Intent to facilitate the development of joint implementation projects in order to encourage: market deployment of greenhouse gas-reducing technologies, including energy efficiency and renewable energy technologies; education and training programs, etc.

Country: **China**

**Title:** Statement of Intent Concerning the Natural Gas-Powered Bus Pilot Project in the Metropolitan Region of Chile

**Comment:** Signed in Santiago, Chile, during the SOAII

Country: **China**

**Title:** Protocol between the Department of Energy of the United States of America and the Ministry of Science and Technology of the People's Republic of China on Cooperation in the Fields of Nuclear Physics and Controlled Magnetic Fusion Research

**Comment:** Cooperate in promoting each other's program in Nuclear Physics and Controlled Magnetic Fusion. Co-terminates with umbrella S&T agreement.

Country: **China**

**Title:** Annex II to the Protocol on Cooperation in the Field of Fossil Energy Research and Development between the Department of Energy of the United States of America and the Ministry of Coal Industry of the People's Republic of China in the Area of Mine Safety and Health

**Comment:** Co-terminates with the Protocol

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<td><strong>Title:</strong> Annex III to the protocol on fossil energy R&amp;D on Cooperation in the field of atmospheric trace gases</td>
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<td><strong>Comment:</strong> Co-terminates with the Protocol</td>
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<td><strong>Title:</strong> Annex IV to protocol on cooperation in field of fossil energy R&amp;D between U.S. Department of Energy &amp; Ministry of Coal Industry of the People's Republic of China in the area of coal preparation and waste stream utilization</td>
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<td><strong>Comment:</strong> TASKS PLANNED WERE COMPLETED IN 10/90. DISCUSSIONS ON POSSIBLE FURTHER COOPERATION IN COAL PREP. Co-terminates with the Protocol</td>
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<td><strong>Title:</strong> Annex V to protocol on cooperation in field of fossil energy R&amp;D between U.S. Department of Energy - Ministry of Coal Industry of the People's Republic of China in the area of atmospheric fluidized bed (AFB) combustion information exchange</td>
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<td><strong>Comment:</strong> EXCHANGE OF REPORTS AND DATA. Co-terminates with Protocol</td>
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<td><strong>Title:</strong> Annex XI to the Protocol for Cooperation in the Field of Fossil Energy Research and Development between the Department Energy of the United States of America and the Ministry of Coal Industry of the People's Republic of China for Cooperation in the Area of Coalbed Methane Recovery and Utilization</td>
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<td><strong>Comment:</strong> Promote technological and economic cooperation in coal bed methane recovery and utilization technology in order to make positive contributions toward improving recovery efficiency and utilization of globally significant natural gas energy resources.</td>
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<td><strong>Title:</strong> Annex XII to the Protocol on Cooperation in the Field of Fossil Energy Research and Development between the Department Energy of the United States of America and the Ministry of Coal Industry of the People's Republic of China for Cooperation in the Area of Regional Climate Research with the China Meteorological Administration</td>
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<td><strong>Comment:</strong> Establish a program of joint R&amp;D and information exchange to document regional climate and climate change, to predict regional climate and climate change and to identify regional impacts of climate</td>
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<td>Annex 13 - Fossil Fuel Utilization</td>
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<td><strong>Title:</strong> Annex XIII to the Protocol for Cooperation in the Field of Fossil Energy Research and Development between the Department Energy of the United States of America and the Ministry of Coal Industry of the People's Republic of China in the Area of Fossil Fuel Utilization for Production of Chemicals</td>
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<td>Annex 14 - Bilateral Consultations on Coal Industry</td>
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<td><strong>Title:</strong> Annex XIV to the Protocol for Cooperation in the field of Fossil Energy Research &amp; Development between the Department of Energy of the United States of America and the Ministry of Coal Industry of the People's Republic of China on Bilateral Consultations and Exchanges on Coal Industry Development and Information</td>
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<td>Annex III - for Cooperation in the areas of Oil and Gas</td>
<td>Fossil Energy</td>
<td>Annex III - for Cooperation in the areas of Oil and Gas</td>
</tr>
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Title: Annex III to the Protocol for Cooperation in the Field of Fossil Energy Technology Development and Utilization between the Department of Energy of the United States of America and The Ministry of Science and Technology of the People's Republic of China for Cooperation in the areas of Oil and Gas

Comment: Remains in force for five years or until termination of the Protocol, whichever occurs first.

Title: Protocol for Cooperation in the Fields of Energy Efficiency and Renewable Energy Technology Development and Utilization between the Department of Energy of the United States of America and the Ministry of Science and Technology of the People's Republic of China

Comment: Desire to conduct bilateral energy consultations by forming a Chinese-American Ministerial Working Group to enhance the understanding of energy issues and promote the exchange of information on energy policies, programs and technologies.


Comment: Remains in force for five years or until termination of the Protocol, whichever occurs first.


Comment: Remains in force for five years or until termination of the Protocol, whichever occurs first.


Comment: Remains in force for five years or until termination of the Protocol, whichever occurs first.

Title: Renewable Energy Business Development ANNEX IV Cooperative Activities between the Department of Energy of the United States of America and the State Economic and Trade Commission of the People's Republic of China

Comment: Remains in force for five years or until termination of the Protocol, whichever occurs first.

Title: The Department of Energy of the United States of America and the Ministry of Science and Technology of the People's Republic of China for Cooperation in the Field of Energy Efficiency and Renewable Energy Technology Development and Utilization Annex V Electric Vehicle and Hybrid-Electric Vehicle Development

Comment: Remains in force for five years or until termination of the Protocol, whichever occurs first.

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<td>Geothermal Production and Use Cooperative Activities between the Department of Energy of the United States of America and the Ministry of Science and Technology of the People's Republic of China Annex VI under The Protocol for cooperation in the Field of Energy Efficiency and renewable Energy Technology Development and Utilization between the Department of Energy of the United States of America and the State Science and Technology Commission of the People's Republic of China</td>
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<td>Statement of Work between the Department of Energy of the United States of America and the Ministry of Science and Technology of the People's Republic of China</td>
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<td>Amendment to The Statement of Work of July 9, 1998 between The Department of Energy of the United States of America and The Ministry of Science and Technology of the People's Republic of China</td>
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<td>Title: Implementing Accord between the U.S. Department of Energy and the Chinese Academy of Sciences for a Program of Collaboration on the Superconducting Super Collider</td>
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<td>Title: Protocol for Cooperation in the Field of Fossil Energy Technology Development and Utilization between the Department of Energy of the United States of America and the Ministry of Science and Technology of the People's Republic of China</td>
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<td>Comment: Remains in force for 5 years from date of signature or as long as the Umbrella Agreement (US-China S&amp;T) remains in force, whichever is shorter.</td>
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<td>Title: Annex II to the Protocol on Cooperation in the Field of Fossil Energy Technology Development and Utilization between The Department of Energy of the United States of America and The Ministry of Science and Technology of the People's Republic of China for Cooperation in the Area of Clean Fuels</td>
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<td>494</td>
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<td>Title: United States of American and People's Republic of China Energy and Environment Cooperation Initiative (energy and environment cooperation initiative)</td>
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<td>Title: Statement of Intent between the Department of Energy of the United States of America and the China Atomic Energy Authority of the People's Republic of China on Research Reactor Fuel</td>
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<td>Comment: Exchange information and views on opportunities for the conversion of research reactors to the use of low enriched uranium.</td>
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<td>Title: Agreement between the Department of Energy of the United States of America and the State Development Planning Commission of the People's Republic of China on Cooperation Concerning Peaceful Uses of Nuclear Technologies</td>
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<td>Comment: Subject to the Gov't to Gov't Peaceful Uses of Nuclear Energy Agreement signed July 23, 1985.</td>
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**Thursday, July 17, 2003**
## All In Force Bilateral Agreements

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**Country: Costa Rica**

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**Country: Czech Republic**

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**Comment:**

Desire to conduct bilateral energy consultations by forming a Chinese-American Ministerial Working Group to enhance the understanding of energy issues and promote the exchange of information on energy policies, programs and technologies.

**Country: Costa Rica**

**Comment:**

Develop, support and facilitate S&T cooperation between cooperating organizations between the two countries in the areas of basic science, environmental protection, medical sciences and health, agriculture, engineering research, energy, natural resources and their useful utilization, standardization, S&T policy and management.

Thursday, July 17, 2003
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<td>Title: Implementing Arrangement between the Department of Energy of the United States of America and the Ministry of Electricity and Energy of the Arab Republic of Egypt for Cooperation in Energy Technology.</td>
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|     |       |           |           |                |                |           |             |         | Title: Annex I to the Implementing Arrangement between the Department of Energy of the United States of America and the Ministry of Electricity and Energy of the Arab Republic of Egypt in the Field of Renewable Energy. |

|     |       |           |           |                |                |           |             |         | Title: Annex II to the Implementing Arrangement between the Department of Energy of the United States of America and the Ministry of Electricity and Energy of the Arab Republic of Egypt for Cooperation in Energy Technology in the Field of Fuel Cells. |

### Country: Egypt

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<td>Title: Implementing Arrangement between the Department of Energy of the United States of America and the Ministry of Electricity and Energy of the Arab Republic of Egypt for Cooperation in Energy Technology.</td>
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### Country: Estonia

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<td>Title: Agreement between the Department of Energy of the United States of America and the Ministry of Economic Affairs of the Republic of Estonia for Scientific and Technology Cooperation on Oil Shale Research and Utilization.</td>
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|     |       |           |           |                |                |           |             |         | Title: Memorandum of Understanding between the Department of Energy of the United States and the Ministry of Economy of Estonia for Technical Cooperation in the Clean-up of the Paldiski Nuclear Training Site. |

| 568 | 490   | 1/6/1995  | 1/6/2005  | Primary DOE    | None           | International Safeguards | EURATOM Safeguards |
|     |       |           |           |                |                |           |             |         | Title: Agreement between the European Atomic Energy Community Represented by the Commission of the European Communities and the United States Department of Energy in the field of Nuclear Materials Safeguards Research and Development. |

### Country: European Atomic Energy Community (EURATOM)

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<td>Title: Agreement between the European Atomic Energy Community Represented by the Commission of the European Communities and the United States Department of Energy in the field of Nuclear Materials Safeguards Research and Development.</td>
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Comment: Auto renewal for five years periods.

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*Thursday, July 17, 2003*
### All In Force Bilateral Agreements

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**Title:** Action Sheet 10 - The United States Department of Energy (DOE) and The European Atomic Energy Community represented by The Commission of European Communities (EURATOM) for Computer Code Development for Automated Acquisition and Real-Time Analysis of Volume Measurement Data

**Comment:**

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<td>Fusion Energy</td>
<td>Fusion Agreement between EURATOM and DOE</td>
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**Title:** Agreement for Cooperation between the European Atomic Energy Community Represented by the Commission of the European Communities and the Department of Energy of the United States of America in the Field of Fusion Energy Research and Development

**Comment:**

### Country: European Union

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**Title:** Implementing Agreement between the Department of Energy of the United States of America and the European Commission for Non-Nuclear Energy Scientific and Technological Co-operation

**Comment:**

### Country: Finland

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**Title:** Implementing Arrangement between the Department of Energy of the United States of America and the Ministry of Trade and Industry of Finland for Cooperation in Energy Research and

**Comment:** Auto renewal for 5 years

### Country: France

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<th>Parent Type</th>
<th>Subject</th>
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**Title:** Statement of Intent between the United States Department of Energy and the French Commissariat a l'Energie Atomique on the West Valley Demonstration Project

**Comment:** Cooperate in the areas of treatment of radioactive waste and decontamination and decommissioning activities throughout the course of the DOE Demonstration Project at the Western New York Nuclear Service Center located at West Valley, New York.

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<td>Civilian Radioactive Waste Management</td>
<td>Low-Level Radioactive Waste</td>
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**Title:** Statement of Intent between the United States Department of Energy and the French Commissariat a l'Energie Atomique in the Field of Low-Level Radioactive Waste

**Comment:** Confirm intent to expand radioactive waste management cooperation in the area of surface and subsurface disposal and storage of low-level radioactive waste, as well as defined activities.
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<td>128</td>
<td>416</td>
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<td>Arms Control and Nonproliferation</td>
<td>Material Control and Accounting</td>
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<td>Title: Agreement between the Department of Energy of the United States and the Commissariat a l'Energie Atomique of France Concerning Research and Development in the Field of Nuclear Material Control and Accounting Measures</td>
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<td>Comment: Cooperate on research, development, testing and evaluation in the area of nuclear material control and accounting measures.</td>
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<tr>
<td>577</td>
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<td>128 Primary DOE</td>
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<td>Title: Action Sheet No. 2 The United States Department of Energy (DOE) and The Commissariat a l'Energie Atomique (CNEA) of France for Isotopic Analysis Evaluation Using the PC/FRAM Physics Isotopics Software</td>
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<td>Title: Agreement between the Department of Energy of the United States and the Commissariat a l'Energie Atomique of France Concerning Research and Development in the Field of Physical Protection of Nuclear Materials and Facilities</td>
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<td>Comment: Improve the US &amp; France nuclear materials and facilities physical protection procedures</td>
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<td>Title: Agreement between the Department of Energy and the Commissariat a l'Energie Atomique for Cooperation in Research Development and Application for Accelerators driven Technology</td>
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<td>Comment: Conduct cooperative program of scientific and technical engineering in research, development and application for accelerator driven technology</td>
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<td>Title: Agreement between the United States Department of Energy and the French Commissariat a l'Energie Atomique in the field of Radioactive Waste Management</td>
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<td>Comment: Cooperation in the management of radioactive wastes for the purpose of minimizing the consequences of radioactive contamination on health and environment and promoting the safe and economic application of nuclear energy. Cooperation includes: characterization of geologic formations; field/laboratory testing; preparation/packaging of radioactive wastes; disposal in geologic formations; environmental and safety issues, etc.</td>
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<td>Title: Agreement between the United States Department of Energy and the National Radioactive Waste Management Agency of France in the Field of Radioactive Waste Management</td>
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<td>Comment: Cooperate for purposes of minimizing consequences of radioactive contamination on health and environment and promoting safe and economic application of nuclear energy.</td>
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Thursday, July 17, 2003
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<td>Megajoule-Class Solid State Lasers - IA #1</td>
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<td>Implement cooperative activities in research and development in megajoule-class solid state laser technology (high-power, high-energy solid state lasers and target experimental chambers and support)</td>
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<td>Implement cooperative activities in research and development in megajoule-class solid state laser technology (high-power, high-energy solid state lasers and target experimental chambers and support)</td>
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<td>Advanced Nuclear Reactor Science and Technology (I-NERI)</td>
<td>Implement cooperative activities in research and development in megajoule-class solid state laser technology (high-power, high-energy solid state lasers and target experimental chambers and support)</td>
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<td>Exchange of Information on Research in Life Sciences</td>
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### Country: Germany

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<td>Title: <em>Memorandum of Understanding between the Department of Energy of the United States of America and the Ministry of Mines and Energy of the Republic of Ghana on Cooperation in Energy Policy, Science and Technology, and Development</em></td>
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<td>Comment: Facilitate and establish cooperative activities in such areas as: energy efficiency and renewable energy; fossil energy, including natural gas, liquified petroleum gas, and clean coal technologies; environmental management, including utilization of energy technologies, particularly cost-effective technologies aimed at reducing emissions of greenhouse gases and minimizing environmental impacts; independent power project development, etc.</td>
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<td>Comment: Exchanging experience and views on opportunities for the utilization of energy efficiency and renewable energy technologies.</td>
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<td>Nuclear Energy</td>
<td>Peaceful Uses of Nuclear Energy</td>
<td>Title: <em>Memorandum of Understanding for the Exchange of Technical Information and for Cooperation in the Field of Peaceful Uses of Nuclear Energy between the Ghana Atomic Energy Commission and Argonne National Laboratory</em></td>
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<td></td>
<td></td>
<td>Comment: Establish the basis for a cooperative institutional relationship for the exchange of S&amp;T information regarding the peaceful uses of atomic energy. This is between Ghana Atomic Energy Commission and ARGONNE NATIONAL LAB*</td>
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**Country: India**

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<td>None</td>
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<td>Energy Efficiency and Renewable Energy</td>
<td>MOU between DOE and India concerning Energy Consultations</td>
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<td>Title: <em>Memorandum of Understanding between the Ministry of Power of the Republic of India and the Department of Energy of the United States of America Concerning Energy Consultations</em></td>
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**Country: Israel**

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<td>Title: <em>Agreement between the Department of Energy of the United States of America and the Ministry of Energy and Infrastructure of Israel Concerning Energy Cooperation</em></td>
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<td></td>
<td>Comment: Establish a framework for collaboration in energy R&amp;D activities including: solar energy; biomass; energy efficiency; wind energy; fossil energy, including oil, gas and coal; electric power production and transmission. Annex I on Intellectual Property and Annex II on Security Obligations are attached. Discussion underway in clean coal technology and electric vehicles.</td>
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<td>None</td>
<td>Arms Control and Nonproliferation</td>
<td>SOI on Nonproliferation, Arms Control and Regional Security</td>
<td>Title: <em>Letter of Intent between the Department of Energy of the United States of America and the Atomic Energy Commission of Israel on cooperation in the Fields of Non-Proliferation, Arms Control, and Regional Security</em></td>
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### Country: *Italy*

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<td>Comment: continues 1985 MOU in Energy R&amp;D</td>
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<td></td>
<td></td>
<td>Comment: Two additional areas were added in March 1998; fuel cells for power applications and externally fired combined cycle systems</td>
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<td></td>
<td>Comment: Provides for collaboration between Ladrello and the Geyser Geothermal Facilities</td>
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<td>Comment: Information Exchange on biomass systems. Task sharing on hot gas clean-up for medium-scale gasifiers.</td>
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<td></td>
<td>Comment: Info exchange on reducing manufacturing costs of PV cells. Cooperation on guidelines for building integrated PV systems.</td>
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<td>Annex 7 - Electric and Hybrid Vehicles</td>
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<td>Title: Annex VII to the Agreement between the Department of Energy of the United States of America and the Ministry of Industry, Commerce and Handicraft of the Republic of Italy in the Field of Energy Research and Development for Cooperation in the Field of Electric and Hybrid Vehicles</td>
<td>Comment: Remains in force for 5 years or until the Agreement expires, whichever is sooner.</td>
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<td>Title: Agreement between the Government of the United States of America and the Government of the Italian Republic for Scientific and Technological Cooperation</td>
<td>Comment: Science and Technology agreement between the United States and the Government of Italy which allows U.S. Government agencies to undertake cooperation in their respective areas of responsibility. Renewed last in 1998.</td>
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### Country: Japan

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<td>Science and Technology</td>
<td>DOE/STA Basic Science &amp; Technology</td>
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<td>Comment: Determine cooperation on joint projects in the field of basic S&amp;T which may include nuclear physics; synchrotron radiation; medical application of the radiation produced by accelerators; spin physics program at the Relativistic Heavy Ion Collider and biologic effects of radiation.</td>
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<td>Comment: Study topics and develop cooperatively and jointly technology and techniques necessary for the safe management of radioactive wastes.</td>
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<td>Arms Control and Nonproliferation</td>
<td>Action Sheet 30 - Randomized Inspection</td>
<td>Title: Action Sheet PNC 30 The United States Department of Energy (DOE) and The Power Reactor and Nuclear Fuel Development Corporation of Japan (PNC) for Joint Study of Improved Safeguards Methodology Using Non-Notice Randomized Inspection</td>
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<td>Action Sheet 37 - A-MAGB at Plutonium Fuel Production Facility</td>
<td>Title: Action Sheet 37 between the United States Department of Energy (DOE) and the Japan Nuclear Cycle Development Institute (JNC) for Development of Plutonium Isotopic Systems for Measuring Containers in the Advanced Material Accountancy Glove Box at PFPF</td>
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<td>Arms Control and Nonproliferation</td>
<td>Action Sheet 38 - Remote Monitoring for Tokai Facility Safeguards System</td>
<td>Title: Action Sheet 38 between the United States Department of Energy (DOE) and the Japan Nuclear Cycle Development Institute (JNC) for Development of Remote Monitoring for Tokai Vitrification Facility Safeguards System</td>
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<td>Arms Control and Nonproliferation</td>
<td>Action Sheet 39 - Radiation Sensor Monitors to Improve Dual C/S at Monju Reactor Core</td>
<td>Title: Action Sheet 39 between The United States Department of Energy (DOE) and The Japan Nuclear Cycle Development Institute (JNC) for Development of Radiation Sensor Monitors to Improve Dual C/S at Monju Reactor Core</td>
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<td>Primary DOE</td>
<td>Arms Control and Nonproliferation</td>
<td>Action Sheet 40 - Isotope Dilation Gamma-Ray Spectrometry</td>
<td>Title: Action Sheet (40) between The United States Department of Energy (DOE) and The Japan Nuclear Cycle Development Institute (JNC) for Joint Research and Development Study of the Metrology of the Isotope Dilation Gamma-Ray Spectrometry (IDGS)</td>
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<td>Title: Specific Memorandum of Agreement Between the Japan Atomic Energy Research Institute and the Department of Energy of the United States of America Concerning Research and Development in Nuclear Material Control, Accountancy, Verification and Physical Protection</td>
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**Title:** Exchange of Letters establishing the STA-DOE Cooperation in Fusion Research and Development

**Comment:** Remains in effect as long as the Exchange of Notes between USA-Japan on Cooperation in Fusion Research and Development

**Title:** Implementing Arrangement between the Japan Atomic Energy Research Institute and the United States Department of Energy on Cooperation in Fusion Research and Development

**Comment:** Appoint coordinators to report to Fusion Committee and to cooperate in such areas as plasma-containment devices, such as tokamaks; joint research related to plasma physics; magnetic fusion concepts; magnetic systems for fusion devices; plasma engineering; fusion-reactor materials; fusion-systems engineering; environmental and safety aspects of fusion energy; plasma diagnostics and vacuum technology; and applications of fusion energy.

**Title:** Annex I to Implementing Arrangement between Japan Atomic Energy Research Institute and U.S. Department of Energy on Cooperation in Fusion Research and Development U.S.-Japan Collaborative Testing of First Wall and Blanket Structural Materials with Mixed Spectrum Fission Reactors

**Comment:** JOINT IRRADIATION EXPERIMENTS AND EVALUATION OF RESULTS.

**Title:** Annex IV to the Implementing Arrangement between the Japan Atomic Energy Research Institute and the United States Department of Energy on Cooperation in Fusion Research and Development for the DOE-JAERI Collaborative Program Technology for Fusion-Fuel Processing

**Comment:** Define, conduct, evaluate the joint operation/experiments on fusion fuel technology with TSTA at LANL for the purposes of developing and demonstrating fuel process technology for fusion power systems; developing/testing environmental/personnel protective systems for tritium handling; developing/testing/qualifying equipment and material for tritium services in the fusion energy program,

**Title:** Annex IX to the Implementing Arrangement between the Japan Atomic Energy Research Institute and United States Department of Energy on Cooperation in Fusion Research and Development for the DOE-JAERI Collaboration on the Data Link

**Comment:** Establish the Data Link to facilitate rapid information exchanges between fusion researchers of the Parties through (1) code development and/or usage; (2) data analysis and/or theory/experiment comparison; (3) access to computers in home countries by visiting scientists for computations related to purpose of visit; (4) administration of the Data Link. VISITS: Yes DURATION: To Be Determined DOE/HQ CONTACT: Arthur Katz, ER-523, (301) 903-4932; FTS: 233-4932

**Title:** Exchange of Letters establishing the Monbusho-DOE Cooperation in Fusion Research and Development

**Comment:** Remains in effect as long as the Exchange of Notes between USA-Japan on Cooperation in Fusion Research and Development

**Title:** Annex 1 to 01/25/83 exchange of letters between Japan Ministry of Education (Monbusho) and USDOE on cooperation in fusion R&D for collaboration in fundamental studies of irradiation effects in fusion materials utilizing fission

**Comment:** JOINT IRRADIATION AND EVALUATION EXPERIMENTS ON MATERIALS

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<td>Comment: Establish comprehensive cooperation in the area of coal energy R&amp;D in order to accelerate development of coal R&amp;D efforts, i.e., coal liquefaction, coal gasification; materials and components for coal conversion and utilization; pollution control technology related to coal conversion and utilization.</td>
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<td>Comment: Establish a Coordinating Committee on Fusion Energy to facilitate the coordination and implementation of cooperative activities in the area of fusion as well as to assure proper balance and to ensure the overall planning and oversight of such cooperative activities.</td>
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<td>Comment: Undertake experimental research on tokamak plasmas with doublet and dec-shaped cross-sections in the Doublet III, a tokamak facility, located in LaJolla, California.</td>
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**Country: Kazakhstan**

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Country: **Korea, Republic of**

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<td>Comment: Promote S&amp;T cooperation in fusion energy research and related fields in order to enhance contributions. Remains in force for 5 years or until termination of the S&amp;T Agreement, whichever occurs first.</td>
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**Title:** Annex V to the Memorandum of Understanding between the Department of Energy of the United States of America and the Ministry of Science and Technology of the Republic of Korea for a Cooperative Laboratory Relationship on a Collaboration Project Supporting the International Nuclear Energy Research Initiative (INERI)

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**Title:** Amendment C to Annex III - Participating Institutions to the Memorandum of Understanding between the Department of Energy of the United States of America and the Ministry of Science and Technology of the Republic of Korea for a Cooperative Laboratory Relationship

**Comment:**

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**Title:** Agreement to Extend and Amend the Memorandum of Understanding between the Department of Energy of the United States of America and the Ministry of Science and Technology of the Republic of Korea for a Cooperative Laboratory Relationship

**Comment:**

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**Title:** Arrangement between the Department of Energy of the United States of America and the Ministry of Science and Technology of the Republic of Korea Concerning Research and Development in Nuclear Material Control, Accountancy, Verification, Physical Protection, and Advanced Containment and Surveillance Technologies for International Safeguards Applications

**Comment:**

### Country: Mexico

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**Title:** Agreement between the United States of America and Mexico for Scientific and Technical Cooperation

**Comment:** Effected by Exchange of Notes Signed at Washington June 15, 1972

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**Title:** Agreement between the Department of Energy of the United States of America and the Secretariat of Energy of the United Mexican States for Energy Cooperation

**Comment:** Develop a framework for cooperation to facilitate establishment of cooperative activities in research, development and commercialization to promote improved use of renewable energy and energy efficiency and fossil energy technologies, giving due consideration to environmental concerns, as well as to exchange, develop, and analyze energy strategies and regulatory criteria and to encourage the promotion of energy trade opportunities.

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<td>Title: Memorandum of Understanding (MOU) for the Exchange of Technical Information and for Cooperation in the Field of Peaceful Uses of Nuclear Energy between the National Institute of Nuclear Research of Mexico and the Los Alamos National laboratory of the United States of America</td>
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### Country: Morocco

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<td>Title: Agreement Between The Department of Energy of the United States of America and The Ministry of Industry, Commerce, Energy and Mines of the Kingdom of Morocco Concerning Cooperation in Energy Efficiency and Renewable Energy</td>
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Country: **Nigeria**


Title: **Memorandum of Intent Concerning Energy Cooperation between the Government of the United States of America and the Government of the Federal Republic of Nigeria**

Comment: Exploit and use conventional sources of energy, develop effective machinery to monitor environmental effects of energy, develop and demonstrate technologies to utilize new and renewable energy sources, training in energy planning and technology and strengthen bilateral relations through increased official cooperation. Formal cooperation never establish

520 466 8/14/1999 Primary DOE None *Other - Energy Policy MOU on Energy Policy

Title: **Memorandum of Understanding between the Department of Energy of the United States of America and the Federal Ministry of Power and Steel of the Federal Republic of Nigeria on Energy Policy**

Comment:

Country: **Pakistan**

49 339 9/24/1994 Statement of Intent None *Other - Climate Change Climate Change

Title: **Joint Statement of Intent between the Department of Energy of the United States of America and the Environment and Urban Affairs Division of the Islamic Republic of Pakistan**

Comment: Enhancing mutual environmental protection, in particular, controlling greenhouse gas emissions to limit potential adverse climate change impacts (Environment and Urban Affairs Division).

50 338 9/24/1994 Statement of Intent None Fossil Energy Statement of Intent w/ Ministry of Petroleum and Natural Resources

Title: **Statement of Intent between the Department of Energy of the United States of America and the Ministry of Petroleum and Natural Resources, Government of the Islamic Republic of Pakistan**

Comment: Promoting trade, investment and cooperation between U.S. & Pakistan (Min of Petroleum and Natural Resources) public and private-sector entities in the fields of fossil fuels (petroleum and minerals, including coal) and new and renewable energy resources, related infrastructure development, and in the exchange of experience and views on opportunities in these sectors.

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**Title:** Statement of Intent between the Department of Energy of the United States of America and the Ministry of Water and Power of the Islamic Republic of Pakistan  
**Comment:** Promoting trade, investment and cooperation between the U.S. and Pakistan (Ministry of Water and Power) private and public sector entities in the fields of fossil and renewable energy, and in the exchange of experience and views on opportunities for improving energy efficiency and enhancing electricity policy.

**Country:** Palestinian Authority

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**Title:** Joint Statement of Intent between the Department of Energy of the United States of America and the Palestinian Energy Authority on Cooperation in the Field of Energy  
**Comment:**

**Country:** Peru

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**Title:** Arrangement for the Exchange of Technical Information and for Cooperation in the Field of Peaceful Uses of Nuclear Energy between the Peruvian Institute of Nuclear Energy and the Los Alamos National Laboratory  
**Comment:**

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**Title:** Joint Statement of Intent between the Department of Energy of the United States of America and the Ministry of Energy and Mines of the Republic of Peru on Cooperation in the Field of Energy  
**Comment:**

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<td>540</td>
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<td>Primary DOE</td>
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<td>Science and Technology</td>
<td>MOU - Cooperation in the Field of Energy</td>
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**Title:** Memorandum of Understanding between the Department of Energy of the United States of America and the Ministry of Energy and Mines of the Republic of Peru on Cooperation in the Field of Energy  
**Comment:**

**Country:** Philippines

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<td>None</td>
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<td>Information and/or Personnel Exchange</td>
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**Title:** Memorandum of Agreement between the Department of Energy of the United States of America and the Department of Energy of the Republic of the Philippines for the Exchange of Energy  
**Comment:**

**Country:** Poland

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<td></td>
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<td></td>
<td>Comment: Develop, support and facilitate S&amp;T cooperation on the basis of the principles of equality, reciprocity, and mutual benefit. Joint projects of mutual interest are funded by a fund contributed to by the two governments. Renewed last in 1997.</td>
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<td></td>
<td>Comment: Study topics associated with the safe management of hazardous wastes, e.g., risks associated with human exposure to environmental contamination from chemical and heavy metals in soils; demonstration of technologies or methodologies for soil cleaning; and other areas determined by both parties.</td>
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<tr>
<td>513</td>
<td>459</td>
<td>3/29/1999</td>
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<td>None</td>
<td>Arms Control and Nonproliferation</td>
<td>Sister Lab Arrangement</td>
<td>Title: Arrangement for Information Exchange and Cooperation in Area of Peaceful Uses of Atomic Energy between United States Department of Energy (DOE) and the Ministry of Industry and Commerce (MIC) - Romania</td>
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<td></td>
<td>Comment: Establishes the basis for a cooperative institutional relationship between the participants for the exchange of scientific and technological and other information regarding the peaceful uses of atomic energy.</td>
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<td>203</td>
<td>395</td>
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<td>9/16/2001</td>
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<td>Environmental Restoration and Waste Management</td>
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<td>Title: Memorandum of Cooperation between the Department of Energy of United States of America and the Ministry of the Russian Federation on Atomic Energy in the Fields of Environmental Restoration and Waste Management</td>
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<td>Comment:</td>
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<td>396</td>
<td>9/16/1996</td>
<td>9/16/2001</td>
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<td>Nuclear Energy</td>
<td>Nuclear Reactor Safety</td>
<td>Russia Federation</td>
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<td></td>
<td>Title: Memorandum of Cooperation between the United States of America and the Russian Federation in the Field of Civilian Nuclear Reactor Safety</td>
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<td></td>
<td>Comment: replaces MOU in Civilian Nuclear Reactor Safety signed 26 April, 1988</td>
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<td></td>
<td>Title: Memorandum of Cooperation between the Department of Energy of the United States of America and the Ministry of the Russian Federation on Atomic Energy in the Field of Magnetic Confinement Fusion</td>
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<td></td>
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<td></td>
<td>Comment: Focus on Fusion science research and development</td>
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<td>213</td>
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<td>Nuclear Energy</td>
<td>Annex 1 - List of Organizations that could participate</td>
<td>Comment:</td>
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<td>2/18/1993</td>
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<td>Intergovernmental</td>
<td>None</td>
<td>Primary DOE</td>
<td>Nuclear Energy</td>
<td>Disposition HEU Extracted From Nuclear Weapons</td>
<td>Comment: Conversion of HEU extracted from nuclear weapons resulting from the reduction of nuclear weapons; the establishment of appropriate measures to fulfill the nonproliferation, physical protection, nuclear material accounting and control, and environmental requirements with respect to HEU and LEU.</td>
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<tr>
<td>202</td>
<td>394</td>
<td>9/16/1996</td>
<td>9/16/2001</td>
<td>Intergovernmental</td>
<td>None</td>
<td>*Other - Fuel Cell Technology</td>
<td>RAFCO</td>
<td>Comment: Joint R&amp;D work in fuel cell technology development</td>
<td>Establish a framework for cooperation in research on radiation effects for the purpose of minimizing the consequences of radioactive contamination on health and the environment. DOE is the Executive Agent and is responsible for coordination of activities to implement the agreement.</td>
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<td>208</td>
<td>324</td>
<td>1/14/1994</td>
<td>1/14/2004</td>
<td>Intergovernmental</td>
<td>None</td>
<td>Environmental Safety Health</td>
<td>Radioactive Contamination Health &amp; Environment</td>
<td>Comment: Establish a framework for cooperation in research on radiation effects for the purpose of minimizing the consequences of radioactive contamination on health and the environment. DOE is the Executive Agent and is responsible for coordination of activities to implement the agreement.</td>
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<td>Primary DOE</td>
<td>None</td>
<td>Arms Control and Nonproliferation</td>
<td>Nonproliferation of Weapons/Weapons</td>
<td>Comment: Facilitate cooperation under the ISTC agreement including the efforts to reduce or eliminate weapons of mass destruction in a safe and secure manner.</td>
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<tr>
<td>209</td>
<td>359</td>
<td>6/15/1995</td>
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<td>210</td>
<td>Primary DOE</td>
<td>Fusion Energy</td>
<td>Annex 1 Weapons Expertise for the Globus-M</td>
<td>Comment: Cooperate to support the A.F. Ioffe Physics-Technical Institute in the completion of the GLOBUS-M project by participating in the modification (or reconstruction) of the experimental hall of the Institute in order to accommodate the new GLOBUS-M spherical tokamak device and the near-by supporting equipment, the buildings that house all the other device supporting systems, and the connections/conduits between the experimental hall and those buildings needed by the GLOBUS-M project.</td>
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**Comment:**

- **Title:** Annex I to the Memorandum of Agreement between the Department of Energy of the United States of America and the International Science and Technology Center in the Russian Federation Concerning Cooperation in Approved Projects to Facilitate the Nonproliferation Cooperation Weapons and Weapons Expertise for the Globus-M Project

- **Comment:** Cooperate to support the A.F. Ioffe Physics-Technical Institute in the completion of the GLOBUS-M project by participating in the modification (or reconstruction) of the experimental hall of the Institute in order to accommodate the new GLOBUS-M spherical tokamak device and the near-by supporting equipment, the buildings that house all the other device supporting systems, and the connections/conduits between the experimental hall and those buildings needed by the GLOBUS-M project.

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<td>Replacement of Russian Pu Production Reactors</td>
<td>Title: Protocol of Meeting between the United States and the Russian Federation on the Replacement of Russian Plutonium Production Reactors Comment:</td>
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<td>515</td>
<td>461</td>
<td>9/22/1998</td>
<td>9/22/2003</td>
<td>Intergovernmental</td>
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<td>Arms Control and Nonproliferation</td>
<td>Nuclear Cities Initiative</td>
<td>Title: Agreement between the Government of the United States of America and the Government of the Russian Federation on the Nuclear Cities Initiative Comment:</td>
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<td>518</td>
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<td>MOU w/ Russian Academy of Sciences</td>
<td>Title: Memorandum of Understanding between the Department of Energy of the United States of America and the Russian Academy of Sciences on Cooperation in Science and Technology Comment:</td>
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<td>565</td>
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<td>Secondary DOE</td>
<td>518</td>
<td>Primary DOE</td>
<td>Environmental Restoration and Waste Management</td>
<td>DOE/RAS Implementing Arrangement 1</td>
<td>Title: Implementing Arrangement #1 Under the Memorandum of Understanding between the United States Department of Energy and the Russian Academy of Sciences on Cooperation in Science and Technology - Geologic Analogues, Migration and Accumulation of Radionuclides in Geologic Media Comment:</td>
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<td>Comment: Implementing Arrangement #2 Under the Memorandum of Understanding between the United States Department of Energy and the Russian Academy of Sciences on Cooperation in Science and Technology - Risk Assessment and Advanced Modeling Regarding Geologic Disposal</td>
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<td>Comment: Annex B of Appendix D Implementing Arrangement #2 under the DOE-RAS Memorandum of Understanding Uncertainty Assessment Through Incorporation of Mathematical Geology in Development of Inverse Flow and Transport Models</td>
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<td>605</td>
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<td>Comment: Appendix K Under Implementing Arrangement #1 of the Memorandum of Understanding Between the U.S. Department of Energy and Russian Academy of Sciences on Cooperation in Science and Technology</td>
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<td>Comment: Appendix D Implementing Arrangement #1 of The U.S. Department of Energy/Russian Academy of Sciences Memorandum of Understanding Uranium Mass Transport Phenomena in Fractured Welded Tuffs</td>
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<th>Subject Description</th>
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</table>
Comment: Exchange information on developments in the electric power industries and encourage more extensive contacts among experts in this field in both countries. |
| 537 | 481   | 7/24/1998  | 7/24/2003| Intergovernmental    | None           |           | Arms Control and Nonproliferation | Plutonium Management                           | Title: Agreement between the Government of the United States of America and the Government of the Russian Federation on Scientific and Technical Cooperation in the Management of Plutonium that has been withdrawn from Nuclear Military Programs
Comment: DOE is the Executive Agent for the U.S. The agreement establishes the U.S.-Russian Joint Steering Committee on Plutonium Management |
| 619 | 514   | 6/30/2000  | 6/30/2005| Secondary DOE        | 607 Primary DOE|           | Civilian Radioactive Waste Management | Protocol extending the agreement between DOE and Russia |
|     |       |            |          |                      |                |           |                              | Protocol extending the agreement between DOE and Russia |
|     |       |            |          |                      |                |           |                              | Protocol extending the agreement between DOE and Russia |
|     |       |            |          |                      |                |           |                              | Protocol extending the agreement between DOE and Russia |
| 641 | 536   | 6/26/2000  | 6/30/2005| Secondary DOE        | 607 Primary DOE|           | Arms Control and Nonproliferation | Extension bet. DOE federal Nuclear and Safety Authority of Russia |
|     |       |            |          |                      |                |           |                              | Protocol extending the agreement between DOE and Russia |
|     |       |            |          |                      |                |           |                              | Protocol extending the agreement between DOE and Russia |
| 636 | 531   | 4/23/2002  |          | Statement of Intent  | None           |           | Science and Technology        | Joint Statement of Intent between DOE and Dubna
Comment: Joint Statement of Intent between the Department of Energy of the United States of America and the Joint Institute for Nuclear Research at Dubna |
| 658 | 553   | 5/8/2002   |          | Primary DOE          | None           |           | *Other - Purchases of Pu-238 for Peaceful Purposes | Purchases of Pu-238 for Peaceful Purposes
Comment: Joint Announcement by the United States Department of Energy and the Russian Federation Ministry for Atomic Energy Concerning Continued Purchases of Pu-238 for Peaceful Purposes |
| 659 | 554   | 7/16/2001  | 7/16/2006| Secondary DOE        | 210 Primary DOE|           | Civilian Radioactive Waste Management | Annex VI
Comment: Annex VI to the Memorandum of Agreement between the Department of the United States of America and the International Science and Technology Center in the Russian Federation Concerning Implementation of Projects of the Office of Civilian Radioactive Waste Management |

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<td>Title: Memorandum of Understanding between the Republic of Senegal and the United States of America for Cooperation on Energy Policy, Science and Technology, and Research and Development</td>
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<td>516</td>
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<td>3/19/1999</td>
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<td>Energy Research and Development</td>
<td>Energy Policy, S and T, and R and D</td>
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<td>Title: Agreement between the Department of Energy and the Ministry of Energy, Mines and Industry of the Republic of Senegal on Cooperation in Energy Policy, Science and Technology, Research and Development</td>
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Country: Senegal

Comment: The objective of this Agreement is to facilitate and establish cooperative activities by the Parties.

Country: South Africa

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<td>Nuclear Energy</td>
<td>Peaceful Uses of Nuclear Energy</td>
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<td>Title: Agreement for Cooperation between the United States of America and the Republic of South Africa Concerning Peaceful Uses of Nuclear Energy</td>
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<td>Comment: Cooperate in the development, use and control of peaceful uses of nuclear energy which must be undertaken with a view to protecting the international environment from radioactive, chemical and thermal contamination. Agreement was signed on 8/25/95 ratified by exchange of diplomatic notes on 12/4/97.</td>
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<td>230</td>
<td>369</td>
<td>8/25/1995</td>
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<td>None</td>
<td>Energy Research and Development</td>
<td>Sustainable Energy Development Committee</td>
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<td>Title: Terms of Reference on the Sustainable Energy Development Committee of the U.S. - South Africa Binational Commission</td>
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<td>Sustainable Development Resource Center</td>
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<td>Comment: Cooperate on the creation of the Sustainable Development Resource enter to advance policies and programs on the use of renewable energy and energy efficiency technologies and participation by nongovernmental organization in the decision making process. Other signatories are EarthKind Intl (Jan Hartke) and USAID (Larry Byrne)</td>
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<td>Comment: Promotion of renewable energy and energy efficient technologies as a cost-effective means of increasing access to energy of the majority of South Africa disadvantaged population (w/USAID as a partner).</td>
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<td>233</td>
<td>374</td>
<td>8/25/1995</td>
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<td>Primary DOE</td>
<td>None</td>
<td>Energy Efficiency and Renewable Energy</td>
<td>Electrification of Rural Clinics (Cape Town)</td>
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<td>Title: Memorandum of Understanding between Sandia National Laboratories of Albuquerque New Mexico, USA and the Independent Development Trust Cape Town, Republic of South Africa</td>
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<td>Comment: Sandia National Lab, as signatory of this MOU, has agreed to co-fund the Independent Development Trust model clinic electrification program and to provide other technical assistance as agreed by mutual consent.</td>
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<td>12/5/2000</td>
<td>Primary DOE</td>
<td>None</td>
<td></td>
<td></td>
<td>Implementing Agreement between the United States Department of Energy and the Department of Mineral and Energy Affairs of South Africa on Collaboration on Energy, Policy, Science, Technology and Development</td>
<td>Facilitate and establish cooperative activities in energy policy, science, technology, development and commercialization activities in such areas as: fossil energy, including clean coal; energy planning, efficiency, renewable energy; environmental management; environment enhancing energy technologies; and private power project development</td>
</tr>
<tr>
<td>58</td>
<td>375</td>
<td>8/25/1995</td>
<td></td>
<td>Statement of Intent</td>
<td>None</td>
<td></td>
<td></td>
<td>Statement of Intent on Renewable Energy Technologies between the National Renewable Energy Laboratory, U.S.A. and Sandia national Laboratories, U.S.A. and the CSIR (Council for Scientific and Industrial Research), Republic of South Africa</td>
<td>NREL and Sandia, by being signatories of this Statement, have agreed to exchange experience and views on opportunities for the appropriate utilization of renewable energy technologies with The Csir, Republic of South Africa. Witnessed by Secretary O’Leary.</td>
</tr>
<tr>
<td>59</td>
<td>383</td>
<td>12/5/1995</td>
<td></td>
<td>Statement of Intent</td>
<td>None</td>
<td></td>
<td></td>
<td>Statement of Intent concerning Cooperation in Sustainable Energy Development and the Mitigation of Greenhouse gases between the Republic of South Africa and the United States of America</td>
<td>Investigate pilot studies the feasibility of the development of projects which could achieve additional mitigation of climate change by addressing anthropogenic emissions by sources and removal by sinks in an environmentally sound and socially and economically equitable fashion through deployment of greenhouse gas mitigation technologies; education/training programs; diversification of energy sources; conservation, restoration and enhancement of natural carbon sinks, etc.</td>
</tr>
<tr>
<td>60</td>
<td>382</td>
<td>12/5/1995</td>
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<td>Statement of Intent</td>
<td>None</td>
<td></td>
<td></td>
<td>Cooperative Agreement between Provincial Governments of the Republic of South Africa on Regional Cooperation in Energy</td>
<td>Intention to cooperate in a manner which will facilitate joint activities related to energy development in an environmentally and economically sound way with the following provincial governments of South Africa: Province of the Free State; Northern Cape Province; Eastern Cape Province</td>
</tr>
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</table>
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<td>None</td>
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<td>Environmental Safety Health</td>
<td>Research on Radiological Evaluations</td>
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<td>Implementing Arrangement between the Department of Energy of the United States of America and the Ministry of Industry and Energy of the Kingdom of Spain on Cooperation in Research on Radiological Evaluations</td>
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<td>307</td>
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<td>Project Annex 1 - cooperation on research in radiological evaluations</td>
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<td>Agreement between the United States Department of Energy and the United States-Spain Joint Committee for Scientific and Technological Cooperation</td>
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<td></td>
<td>Establish responsibilities, guidelines and procedures for evaluating, funding and coordinating research proposals, projects and related activities in the field of energy selected and funded by the US-Spain Joint Committee for S&amp;T Cooperation.</td>
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<tr>
<td>596</td>
<td>491</td>
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<td>7/15/2006</td>
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<td>Energy Research and Development</td>
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<td>Memorandum of Understanding Between The Ministry of Science and Technology of the Kingdom of Spain and The Department of Energy of the United States of America Concerning Cooperation in Energy</td>
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#### Country: Spain

- **Title:** Implementing Arrangement between the Department of Energy of the United States of America and the Ministry of Industry and Energy of the Kingdom of Spain on Cooperation in Research on Radiological Evaluations
- **Comment:** Related to radioactive waste management.

#### Country: Sweden

- **Title:** Subject and Umbrella contents are classified
- **Comment:** Description not available in History

#### Country: Switzerland

- **Title:** Agreement between the United States Department of Energy and the Swedish Nuclear Fuel and Waste Management Company Concerning a Cooperative Program in the Field of Radioactive Waste Management
- **Comment:**

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<td>None</td>
<td>None</td>
<td>Arms Control and Nonproliferation</td>
<td>Lab-to-Lab arrangement</td>
<td>Arrangement for the Exchange of Technical Information and for Cooperation in the Field of Peaceful Uses of Nuclear Energy between the Office of Atomic Energy for Peace of Thailand and the United States Department of Energy</td>
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<td>624</td>
<td>519</td>
<td>3/20/2002</td>
<td>3/20/2007</td>
<td>Primary DOE</td>
<td>None</td>
<td>None</td>
<td>Science and Technology</td>
<td>Cooperation in Energy Technology</td>
<td>Implementing Arrangement between the Department of Energy of the United States of America and the Ministry of Energy and Natural Resources of the Republic of Turkey for Cooperation in Energy Technology</td>
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<td>507</td>
<td>454</td>
<td>4/26/1996</td>
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<td>Intergovernmental</td>
<td>None</td>
<td>None</td>
<td>*Other - Radioactive Waste</td>
<td>Chornobly Center</td>
<td>Memorandum of Understanding on Participation In and Support of the Activities of the International Chornobyl Center on Nuclear Safety, Radioactive Waste and Radioecology</td>
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Country: Thailand

Country: Turkey

Country: Ukraine

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<td>Title: Agreement between the Government of the United States of America and the Government of Ukraine Concerning the International Radioecology Laboratory of the International Chornobyl Center on Nuclear Safety, Radioactive Waste and Radioecology</td>
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<td></td>
<td></td>
<td>Comment: Department of Energy is the Executive Agent</td>
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<td>Title: Agreement for Cooperation between the United States of America and Ukraine Concerning Peaceful Uses of Nuclear Energy</td>
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<td></td>
<td></td>
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<td>Title: Joint Statement About Paths to the Soonest Possible Shutdown of the Chernobyl Nuclear Power Plant</td>
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<td></td>
<td></td>
<td>Comment: Undertake near-term joint analysis of options for earliest possible closure of the Chernobyl power plant.</td>
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### Country: United Kingdom

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<td>41</td>
<td>364</td>
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<td>Statement of Intent</td>
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<td>Environmental Restoration and Waste Management</td>
<td>Nuclear Clean-Up</td>
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<td>Title: Heads of Agreement for Cooperation Between the United States Department of Energy and the United Kingdom Department of Trade and Industry on their Perspective Program for Nuclear Clean-up</td>
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<td></td>
<td>Comment: Cooperate, through sharing of information, on similar issues associated with nuclear decommissioning and clean-up</td>
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<td>42</td>
<td>390</td>
<td>9/5/1996</td>
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<td>Environmental Restoration and Waste Management</td>
<td>Environmental Restoration and Waste Management</td>
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<td>Title: Statement of Intent between the United States Department of Energy and the United Kingdom Department of Trade and Industry</td>
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<td></td>
<td></td>
<td></td>
<td>Comment: Establish framework for cooperation in R&amp;D of technologies for the treatment, packaging, disposal of aluminum-based spent nuclear fuel.</td>
<td></td>
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<td></td>
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<td>Title: Memorandum of Understanding Between The Department of Energy of the United States of America and The Department of Trade and Industry of the United Kingdom of Great Britain and Northern Ireland</td>
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<td>Title: Implementing Arrangement between the Department of Energy of the United States of America and AEA Technology plc Under the Memorandum of Understanding on Energy R&amp;D between the Department of Energy of the United States of America and the Department of Trade and Industry of the United Kingdom of Great Britain and Northern Ireland</td>
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<td>506</td>
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<td>9/17/2006</td>
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<td>None</td>
<td>Nuclear Verification Technologies</td>
<td>MOU between DOE and the Department of Trade and Industry of the United Kingdom Concerning the Development and Implementation of Nuclear Verification Technologies</td>
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**Title:** Memorandum of Understanding between the Department of Energy of the United States of America and the Department of Trade and Industry of the United Kingdom of Great Britain and Northern Ireland Concerning the Development and Implementation of Nuclear Verification Technologies

**Comment:**

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<td>637</td>
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<td>Implementing Agreement between DOE and the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland for Cooperation in Research and Development of Chemical and Biological Weapons Detection and Protection-Related Technologies</td>
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**Title:** Implementing Arrangement between the Department of Energy of the United States of America and the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland for Cooperation in Research and Development of Chemical and Biological Weapons Detection and Protection-Related Technologies

**Comment:**

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**Title:** Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for Cooperation in Research and Development of Weapons Detection and Protection-Related Technologies

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<td>Implementing Arrangement between the Department of Energy of the United States of America and the Department of Trade and Industry of the United Kingdom of Great Britain and Northern Ireland to Cooperate in the Field of Fossil Energy Technology</td>
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**Title:** Memorandum of understanding between the U.S. Department of Energy and the Department of energy of the United Kingdom of Great Britain and Northern Ireland on collaboration in energy research and development

**Comment:** To continue and maximize cooperation in energy research and development.

### Country: Uzbekistan

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<td>Arms Control and Nonproliferation</td>
<td>Proliferation of Nuclear Materials and Technologies</td>
<td>Agreement between the Department of Energy of the United States of America and the Ministry of Foreign Affairs of the Republic of Uzbekistan Concerning Cooperation in the area of Prevention of Proliferation of Nuclear Materials and Technologies</td>
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**Title:** Agreement between the Department of Energy of the United States of America and the Ministry of Foreign Affairs of the Republic of Uzbekistan Concerning Cooperation in the area of Prevention of Proliferation of Nuclear Materials and Technologies

**Comment:**

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<td>Energy Research and Development</td>
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<td>Supersedes the March 6, 1980 Energy R&amp;D agreement</td>
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<td>Project Annex 1 between the Department of Energy of the United States of America and the Ministry of Energy and Mines of Venezuela for the Joint Characterization of Heavy Crude Oils</td>
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<td></td>
<td>Exchange published technical information and jointly modify or develop new techniques for the characterization of heavy crude oil and heavy ends.</td>
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<td></td>
<td>Cooperate in the application of additives to steam injection for the recovery of heavy oil thereby further efforts on the understanding of the thermal processes and the reservoir and its fluids where these processes are conducted.</td>
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<td>Project Annex X between the Department of Energy of the United States of America and the Ministry of Energy and Mines of the Republic of Venezuela for On-Site Training of Petroleum Engineers</td>
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<td>Training of Venezuelan petroleum engineers at Elks Hills Naval Petroleum Facility.</td>
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<td>DOE and MEMV shall cooperate in using their good offices and taking all reasonable steps to facilitate the exchange of energy-related personnel between Venezuela and the U.S. in the areas of fossil and ~</td>
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<td>Implementing Agreement XV to the Memorandum of Understanding between the Department of Energy of the United States of America and the Ministry of Energy and Mines of the Republic of Venezuela in the Area of “Oil Recovery Information and Technology Transfer”</td>
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<td>Evaluate past and ongoing improved oil recovery projects in US and Venezuela; Data base compilation and exchange.</td>
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<td>000011</td>
<td>International Energy Agency Implementing Agreement on Solar Heating and Cooling Program</td>
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<td>12/31/94</td>
<td>EE</td>
<td>000024</td>
<td>International Energy Agency Implementing Agreement on Solar Heating and Cooling Program</td>
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<tr>
<td>1/1/2050</td>
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DRAFT RFP
# United States Department of Energy
## Agreement Listing

**Listing of Agreements Under the Aegis of:** IEA

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PART III - SECTION J

APPENDIX K

RESERVED
ATTACHMENT J.12

APPENDIX L

PERFORMANCE GUARANTEE

Applicable to the Operation of Argonne National Laboratory

Contract No. DE-AC02-06CH11357

J-L-1
PERFORMANCE GUARANTEE AGREEMENT

The University of Chicago

For value received, and in consideration of, and in order to induce the United States (the Government) to enter into Contract DE-AC02-06CH11357 for the management and operation of Argonne National Laboratory (Contract dated as specified on Block 28 of SF 33), by and between the Government and UChicago Argonne, LLC (Contractor), the undersigned, The University of Chicago (Guarantor), a not-for-profit institution of higher learning established in the State of Illinois with its principal place of business at 5801 South Ellis Avenue, Chicago IL 60637 hereby unconditionally guarantees to the Government (a) the full and prompt payment and performance of all obligations, accrued and executory, which Contractor presently or hereafter may have to the Government under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to the Government, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and (c) Guarantor further agrees to indemnify the Government against any losses the Government may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the Government of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by the Government of any of its rights against Guarantor hereunder.

Guarantor has read and consents to the signing of the Contract. Guarantor further agrees that Contractor shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder.

Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (iii) the assertion by the Government against Contractor of any of the Government’s rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in the Government’s favor in law, equity, or bankruptcy.

Guarantor further agrees that its liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that the Government shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by
Contractor, or otherwise. Guarantor affirms that the Government shall not be required to first commence any action or obtain any judgment against Contractor before enforcing this Performance Guarantee Agreement against Guarantor, and that Guarantor will, upon demand, pay the Government any amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Contract or under any other document(s) or instrument(s) executed by Contractor as aforesaid, and that Guarantor will upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.

Guarantor further warrants and represents to the Government that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantor’s Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor’s Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on May 18, 2006.

[Signature Page Follows]
The University of Chicago (Name of Guarantor)

Signature: [Signature]

Name: Thomas F. Rosenbaum
Title: Vice President for Research and for Argonne National Laboratory

EXECUTING PERFORMANCE
GUARANTEE AGREEMENT ON BEHALF OF GUARANTOR

ATTESTATION INCLUDING APPLICATION
OF SEAL BY AN OFFICIAL OF
GUARANTOR AUTHORIZED TO AFFIX
CORPORATE SEAL

Original acknowledged on May 18, 2006 by:

[Signature]
Kineret S. Jaffe
Secretary of the Board of Trustees
The University of Chicago
PART III - SECTION J

APPENDIX M

RESERVED
Annex on Information and Intellectual Property

Article 1

Subject Matter and Definitions

1.1 This Annex covers the dissemination, exchange, use and protection of information and intellectual property pertaining to protectable subject matter, in the execution of this Agreement. Unless otherwise provided, the terms used in this Annex shall have the same meaning as in this Agreement.

1.2 Information shall mean published data, drawings, designs, computations, reports and other documents, documented data or methods of research and development, as well as the description of inventions and discoveries, whether or not protectable, which are not covered by the term Intellectual Property as defined in paragraph 1.3 below.

1.3 Intellectual Property shall have the meaning defined in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm on July 14, 1967. For the purposes of this Annex, Intellectual Property may include confidential information such as know-how or trade secrets provided that they are unpublished, and in written or otherwise documented form, and

a) have been held in confidence by their owner,

b) are not generally known or available to the public from other sources, and/or are not generally available to the public in printed publications and/or other readable documents,

c) have not been made available by their owner to other parties without an obligation concerning confidentiality, and

d) are not available to the receiving party without an obligation concerning confidentiality.

1.4 Background Intellectual Property shall mean Intellectual Property that has been or is acquired, developed or produced, before the entry into force of this Agreement, or outside of the scope of this Agreement.

1.5 Generated Intellectual Property shall mean Intellectual Property that is generated or acquired with full ownership by a Member, acting through a Domestic Agency or Entity, or by the ITER Organization or jointly pursuant to and in the course of the performance of this Agreement.

1.6 Improvements shall mean any technological advancement to existing Intellectual Property, including derivative works.

1.7 Entity or Entities shall mean any entity with which a Domestic Agency or the ITER Organization has entered into a contract for the supply of goods or services for the purposes of this Agreement.
Article 2

General Provisions

2.1. Subject to the provisions of this Annex, the Members support the widest possible dissemination of Generated Intellectual Property.

2.2. Each Member shall ensure that the other Members and the ITER Organization can obtain the rights to Intellectual Property allocated in accordance with this Annex. Contracts placed by each Member or the ITER Organization with any Entity shall be consistent with the provisions of this Annex. In particular, appropriate public procurement procedures must be followed by all Members and the ITER Organization in order to ensure compliance with this Annex.

The ITER Organization shall properly identify in a timely manner the Background Intellectual Property of the contracting Entities with a view to obtaining for the ITER Organization and the Members access to this Background Intellectual Property in conformity with this Annex.

Each Member shall properly identify in a timely manner the Background Intellectual Property of the contracting Entities with a view to obtaining for the ITER Organization and the Members access to this Background Intellectual Property in conformity with this Annex.

Each Member and the ITER Organization shall ensure access for the ITER Organization and the other Members to inventions and other Intellectual Property generated or incorporated in the execution of the contracts provided that inventors' rights are respected, in conformity with this Annex.

2.3 This Annex does not alter or prejudice the allocation of rights between a Member and its nationals. Whether the rights concerning Intellectual Property shall be held by a Member or its nationals shall be determined as between themselves in accordance with their applicable laws and regulations.

2.4 If a Member generates or acquires full ownership of Intellectual Property in the course of the execution of this Agreement, the Member shall notify all other Members and the ITER Organization in a timely manner and provide details of such Intellectual Property.

Article 3

Dissemination of Information and Scientific Publications whether or not Copyrighted

Each Member shall be entitled, for non commercial uses, to translate, reproduce, and publicly distribute Information directly arising from the execution of this Agreement. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.
Article 4

Intellectual Property Generated or Incorporated by a Member, a Domestic Agency or Entity

4.1. Generated Intellectual Property:

4.1.1 If protectable subject matter is generated by a Member, a Domestic Agency or Entity in the course of the execution of this Agreement, the Member, the Domestic Agency or Entity shall be entitled to acquire all rights, title and interest in all countries in and to such intellectual property according to applicable laws and regulations.

4.1.2 Any Member, acting through a Domestic Agency or Entity, which has generated Intellectual Property in the course of the execution of this Agreement shall grant on an equal and non-discriminatory basis an irrevocable, non-exclusive, royalty-free license to such Generated Intellectual Property to other Members and the ITER Organization, with the right of the ITER Organization to sub-license, and the right of the other Members to sub-license within their respective territory, for the purposes of publicly sponsored fusion research and development programmes.

4.1.3 Any Member, acting through a Domestic Agency or Entity, which has generated Intellectual Property in the course of the execution of this Agreement shall make available on an equal and non-discriminatory basis a non-exclusive license to such Generated Intellectual Property to the other Members for commercial fusion use, with the right to sub-license for such use by such Members’ own domestic third parties within such Members’ own territory on terms no less favorable than the basis upon which such Member licenses such Generated Intellectual Property to third parties within or outside such Member’s own territory. As long as such terms have been offered such license shall not be denied. The above license may be revoked only in case the licensee does not fulfill its contractual obligations.

4.1.4 Any Member, acting through a Domestic Agency or Entity, which has generated Intellectual Property pursuant to this Agreement is encouraged to enter into commercial arrangements with the other Members, Domestic Agencies, Entities and third parties in order to allow use of Generated Intellectual Property in fields other than fusion.

4.1.5 Members, and their Domestic Agencies or Entities, that license or sub-license Generated or Background Intellectual Property pursuant to this Annex, will maintain records of any such licensing, which records will be available to other Members, such as through the ITER Organization.

4.2. Background Intellectual Property:

4.2.1 Background Intellectual Property shall remain the property of the party that owns this intellectual property.

4.2.2 Any Member, acting through a Domestic Agency or Entity, which has incorporated Background Intellectual Property, except confidential information such as know-how and trade secrets into the items provided to the ITER Organization which Background Intellectual Property is required:
• to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,

• to maintain or repair the item provided, or

• when decided necessary by the Council, in advance of any public procurement,

shall grant on an equal and non-discriminatory basis an irrevocable, non-exclusive, royalty-free license to such Background Intellectual Property to other Members and to the ITER Organization, with the right of the ITER Organization to sub-license and the right of Members to sub-license to their research institutes and institutes of higher education within their respective territory for the purposes of publicly sponsored fusion research and development programmes.

4.2.3. (a) Any Member, acting through a Domestic Agency or Entity, which has incorporated background confidential information into the items provided to the ITER Organization which background confidential information is required:

• to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,

• to maintain or repair the item,

• when decided necessary by the Council, in advance of any public procurement, or

• for safety, for quality assurance and quality control reasons as required by regulatory authorities,

shall ensure that the ITER Organization has an irrevocable, non-exclusive, royalty-free license available to use such background confidential information including manuals or instructional training materials for the construction, operation, maintenance and repair of the ITER facilities.

(b) When confidential information is made available to the ITER Organization, it must be clearly marked so, and transmitted pursuant to an arrangement for confidentiality. The recipient of such information shall use it only for purposes set forth in 4.2.3 (a) and shall preserve its confidentiality to the extent provided in that arrangement. Compensation for damages arising from the misuse of such background confidential information by the ITER Organization shall be paid by the ITER Organization.

4.2.4. Any Member, acting through a Domestic Agency or Entity, which has incorporated background confidential information such as know how or trade secrets into the items provided to the ITER Organization which background confidential information is required:

• to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,

• to maintain or repair the item provided, or
• when decided necessary by the Council, in advance of any public procurement,

shall use its best efforts to either grant a commercial license to such background confidential information or supply the same items incorporating the background confidential information to the receiving party by means of private contracts with financial compensation for publicly sponsored fusion research and development programmes of a Member on terms no less favorable than the basis upon which such Member licenses such background confidential information or supplies the same items to third parties within or outside such Member's own territory. As long as such terms have been offered, such license or supply of such item shall not be denied. The license, if granted, may be revoked only in case the licensee does not fulfil its contractual obligations.

4.2.5. Any Member, acting through a Domestic Agency or Entity, which has incorporated Background Intellectual Property, including background confidential information, in the execution of this Agreement shall use its best efforts to make sure that the component incorporating the Background Intellectual Property is available on reasonable terms and conditions, or use its best efforts to grant on an equal and non-discriminatory basis a non-exclusive license to the other Members for commercial fusion use, with the right to sub-license for such use by such Members' own domestic third parties within such Members’ own territory, on terms no less favorable than the basis upon which such Member licenses such Background Intellectual Property to third parties within or outside such Member’s own territory. As long as such terms have been offered, such license shall not be denied. The above license may be revoked only in case the licensee does not fulfil its contractual obligations.

4.2.6. Any Member, acting through a Domestic Agency or Entity, is encouraged to make available for commercial purposes other than those set out in article 4.2.5. to the other Members, any Background Intellectual Property incorporated into the items provided to the ITER Organization which Background Intellectual Property was required:

• to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,

• to maintain or repair the item provided, or

• when decided necessary by the Council, in advance of any public procurement.

Such Background Intellectual Property, if licensed by the owners to the Members, shall be licensed on an equal and non-discriminatory basis.

4.3. Licensing to Third Parties of Non-Members:

Any license on Generated Intellectual Property granted by the Members to third parties of non-Members shall be subject to the rules on licensing to third parties determined by the Council. Such rules shall be determined by unanimous decision of the Council.
Article 5

Intellectual Property Generated or Incorporated by the ITER Organization

5.1 Generated Intellectual Property:

5.1.1 Where intellectual property is generated by the ITER Organization, in the course of the execution of this Agreement, it shall be owned by the ITER Organization. The ITER Organization shall develop appropriate procedures for the recording, reporting and protection of the Intellectual Property.

5.1.2 Such intellectual property shall be licensed by the ITER Organization to the Members on an equal, non-discriminatory, irrevocable, non-exclusive, royalty-free basis, with the right of the Members to sub-license within their territory for the purpose of fusion research and development.

5.1.3 Generated Intellectual Property that has been developed or acquired by the ITER Organization in the course of the execution of this Agreement shall be licensed to the Members on an equal, non-discriminatory, non-exclusive basis for commercial use, with the right to sub-license for such use by such Members' own domestic third parties within such Members' own territory on terms no less favorable than the basis upon which the ITER Organization licenses such Generated Intellectual Property to third parties. As long as such terms have been offered, such license shall not be denied. The above license may be revoked only in case the licensee does not fulfill its contractual obligations.

5.2 Background Intellectual Property:

5.2.1 Provided that it has the pertinent rights, when the ITER Organization incorporates Background Intellectual Property which is required:

- to construct operate, use or integrate technology for research and development in relation to the ITER facilities,
- to create improvements and derivative works,
- to repair and maintain the ITER facilities, or
- when decided necessary by the Council, in advance of any public procurement,

the ITER Organization shall make the necessary arrangements in order to sub-license that Background Intellectual Property on an equal and non-discriminatory basis by an irrevocable, non-exclusive, royalty-free license to the Members, with the right of the Members to sub-license within their respective territory for the purpose of fusion research and development. The ITER Organization shall make its best efforts to acquire the pertinent rights.

5.2.2 For Background Intellectual Property, including background confidential information, incorporated by the ITER Organization in the course of the execution of this Agreement, the ITER Organization shall use its best efforts to make available on an equal and non-discriminatory basis a non-exclusive license to the Members for commercial fusion use, with the right to sub-license for such use by such Members'
own domestic third parties within such Members' own territory on terms no less favorable than the basis upon which the ITER Organization licenses such Background Intellectual Property to third parties. As long as such terms have been offered, such license shall not be denied. The above license may be revoked only in case the licensee does not fulfill its contractual obligations.

5.2.3. The ITER Organization shall use its best efforts to make available to the Members any Background Intellectual Property, including background confidential information, for purposes other than those set out in article 5.2.2. Such Background Intellectual Property, if licensed by the ITER Organization to the Members, shall be licensed on an equal and non-discriminatory basis.

5.3 Licensing to third parties of a non-Member:

Any license granted by the ITER Organization to third parties of a non-Member shall be subject to the rules on licensing to third parties determined by the Council. Such rules shall be determined by unanimous decision of the Council.

Article 6

Intellectual Property Generated by the ITER Organization’s Staff and other Researchers

6.1. Intellectual Property generated by directly employed and seconded staff of the ITER Organization shall be owned by the ITER Organization and treated in corresponding employment contracts or regulations consistent with the provisions set out herein.

6.2. Intellectual Property generated by visiting researchers who are participating in the activities of the ITER Organization through an arrangement with the ITER Organization for undertaking specific activities and who are directly involved in general programmes of the ITER Organization exploitation, shall be owned by the ITER Organization unless otherwise agreed by the Council.

6.3. Intellectual Property generated by visiting researchers not involved in general programmes of the ITER Organization exploitation shall be subject to an arrangement with the ITER Organization pursuant to conditions established by the Council.

Article 7

Protection of Intellectual Property

7.1. When a Member acquires or seeks protection for Generated Intellectual Property developed or acquired by that Member, such Member shall notify in a timely manner and provide details of such protection to all other Members and to the ITER Organization. If a Member decides not to exercise its right to seek protection for Generated Intellectual Property in any country or region, it shall notify the ITER Organization in a timely manner of its decision, and the ITER Organization may then seek to obtain such protection either directly or via the Members.
7.2. For Generated Intellectual Property developed or acquired by the ITER Organization, the Council shall adopt, as soon as practicable, appropriate procedures for the reporting, protection and recording of such Intellectual Property for example through the creation of a database to which the Members may have access.

7.3. In the event of a joint creation, the participating Members and/or the ITER Organization shall have the right to seek to obtain in co-ownership Intellectual Property in any State they choose.

7.4. There shall be co-ownership of Intellectual Property when created by two or more Members or by one or more Members together with the ITER Organization and when the features of such intellectual property are not capable of being separated for the purpose of applying for, obtaining and/or maintaining in force the protection of the relevant intellectual property right. In such a case the joint creators shall agree among themselves by means of a co-ownership arrangement on the allocation of and the terms of exercising the ownership of the said Intellectual Property.

Article 8

Decommissioning

8.1. For the decommissioning phase after the transfer of the facilities to the Host State, the Host Party shall provide to the other Members all relevant information, whether published or not, generated or used during the decommissioning of the ITER facilities.

8.2. Intellectual Property generated by the Host State during the decommissioning phase shall not be affected by this Annex.

Article 9

Termination and Withdrawal

9.1. The Council shall, as necessary, address any issues relating to the termination of this Agreement or the withdrawal of a Party in so far as they relate to Intellectual Property, that are not fully addressed in this Agreement.

9.2. The Intellectual Property rights conferred and obligations imposed upon the Members and the ITER Organization by the provisions of this Annex, in particular all granted licenses, shall subsist after the termination of this Agreement, or after the withdrawal of a Party.

Article 10

Royalties

Royalties received from the licensing of Intellectual Property by the ITER Organization shall be a resource of the ITER Organization.
Article 11

Settlement of Disputes

Any dispute arising out of or in connection with this Annex shall be settled in accordance with Article 25 of this Agreement.

Article 12

Awards to Inventors

The Council shall determine appropriate terms and conditions for the remuneration of the Staff when such Staff generates Intellectual Property.

Article 13

Liability

When negotiating license arrangements, the ITER Organization and the Members shall, as appropriate, include suitable provisions governing their respective liabilities, rights and obligations arising from the execution of those license arrangements.