
National Nuclear Security Administration Nevada Site Office



**NNS Prime Contract
DE-AC52-06NA25946
Effective July 1, 2006
Updated to include
Modifications through 337**



Vision – Service – Partnership

SOLICITATION, OFFER AND AWARD1. THIS CONTRACT IS NOT A RATED ORDER
UNDER DPAS (15 CFR 350)RATING
DO E-2 and DO F-2PAGE OF PAGES
1 1

2. CONTRACT NO.

3. SOLICITATION NO.

4. TYPE OF SOLICITATION

5. DATE ISSUED

6. REQUISITION/PURCHASE NO.

DE-AC52-06NA25946

DE-RP52-05NA25946

 SEALED BID (IFB)

February 14, 2005

See Clause B-2

 NEGOTIATED (RFP)

7. ISSUED BY

CODE

PMOD

U.S. DEPARTMENT OF ENERGY
NATIONAL NUCLEAR SECURITY ADMINISTRATION
NNSA SERVICE CENTER - ALBUQUERQUE
M&O SUPPORT DEPARTMENT
PO BOX 5400, ALBUQUERQUE, NM 87185-5400

8. ADDRESS OFFER TO (If other than Item 7)

U.S. DEPARTMENT OF ENERGY
NATIONAL NUCLEAR SECURITY ADMINISTRATION
NNSA SERVICE CENTER - ALBUQUERQUE
ATTN: JUAN D. WILLIAMS
CONTRACTING OFFICER
MAIL STOP: PMOD
PO BOX 5400, ALBUQUERQUE, NM 87185-5400

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

SOLICITATION

9. Sealed offers in original and (number and kind of copies are specified in Section L) copies for furnishing the supplies and/or services in the Schedule will be received at the place specified in item 8, until 1600 hour local time on April 15, 2005.

10. FOR
INFORMATION
CALL:

A. NAME

Juan D. Williams
Contracting Officer

B. TELEPHONE (Include area code)

(NO COLLECT CALLS)
(505) 845-5865

C. E-MAIL ADDRESS

jdwilliams@doeal.gov

11. TABLE OF CONTENTS

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

*See attached Table of Contents

OFFER (Must be fully completed by offeror)

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

12. In compliance with the above, the undersigned agrees, if this offer is accepted within See Section L Provision entitled "Offer Acceptance Period" calendar days (60 calendar days unless a different period is inserted by the offeror) from the date of 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 Not Applicable	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %
14. ACKNOWLEDGEMENTS OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated:	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
	001	3/2/05	002	3/15/05
			003	1/23/06

15A. NAME AND ADDRESS OF OFFEROR	CAGE CODE: 38GK0	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)
NSTec LLC 2411 Dulles Corner Park, Herndon, VA 20171-3430		Suite 600 DUNS: 195194779	Nimish Doshi VP Contracts Pricing & Procurement

15B. TELEPHONE NO. (Include area code) (703) 713-4369	<input checked="" type="checkbox"/> 15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.	17. SIGNATURE <i>Nimish Doshi</i>	18. OFFER DATE 6 FEB 2006
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AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION See Clause B-2
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: Not Applicable <input type="checkbox"/> 10 U.S.C. 2304(c) () <input type="checkbox"/> 41 U.S.C. 253(c) ()	23. SUBMIT INVOICES TO ADDRESS SHOWN IN Not Applicable	ITEM
24. ADMINISTERED BY (If other than Item 7) CODE See Section G Clause entitled "Government Contacts"	25. PAYMENT WILL BE MADE BY CODE See Section I Clause entitled "Payments and Advances"	
26. NAME OF CONTRACTING OFFICER (Type or print) Juan D. Williams Contracting Officer	27. UNITED STATES OF AMERICA, (Signature of Contracting Officer)	28. AWARD DATE 3/28/06

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

Funding Modification 337
Funding Modification 336
Funding Modification 335
Funding Modification 334
Funding Modification 331
Funding Modification 330
Funding Modification 329
Funding Modification 328
Modification 327
Modification 326
Funding Modification 325
Funding Modification 324
Funding Modification 322
Funding Modification 321
Modification 320
Modification 319
Modification 318
Modification 317
Funding Modification 315
Funding Modification 314
Modification 313
Funding Modification 310
Funding Modification 309
Funding Modification 308
Funding Modification 307
Funding Modification 306
Funding Modification 305
Funding Modification 304
Funding Modification 303
Funding Modification 301
Funding Modification 300
Modification 298
Modification 297
Funding Modification 296
Funding Modification 295
Funding Modification 292
Funding Modification 291
Funding Modification 290
Funding Modification 289
Fee Modification 288
Funding Modification 287
Funding Modification 286
Funding Modification 285
Funding Modification 282
Funding Modification 281
Funding Modification 280

Funding Modification 279
Funding Modification 278
Funding Modification 277
Funding Modification 276
Funding Modification 275
Funding Modification 273
Funding Modification 272
Funding Modification 271
Funding Modification 270
Funding Modification 268
Funding Modification 267
Funding Modification 266
Funding Modification 265
Modification 263
Funding Modification 262
Funding Modification 261
Funding Modification 259
Funding Modification 258
Funding Modification 257
Funding Modification 256
Funding Modification 254
Funding Modification 253
Modification 252
Funding Modification 249
Funding Modification 248
Funding Modification 247
Funding Modification 246
Funding Modification 245
Funding Modification 244
Funding Modification 243
Funding Modification 241
Funding Modification 240
Funding Modification 239
Funding Modification 238
Funding Modification 236
Funding Modification 235
Modification 234
Funding Modification 233
Funding Modification 232
Funding Modification 231
Funding Modification 230
Funding Modification 229
Funding Modification 228
Funding Modification 227
Funding Modification 226
Modification 225

Funding Modification 224
Funding Modification 223
Funding Modification 222
Funding Modification 221
Funding Modification 219
Funding Modification 218
Modification 217
Modification 216
Modification 214
Modification 213
Modification 212
Modification 211
Modification 210
Funding Modification 208
Funding Modification 207
Funding Modification 206
Funding Modification 205
Funding Modification 203
Funding Modification 202
Funding Modification 201
Funding Modification 200
Funding Modification 198
Funding Modification 197
Funding Modification 195
Funding Modification 194
Modification 193
Funding Modification 192
Funding Modification 191
Funding Modification 190
Funding Modification 189
Funding Modification 188
Funding Modification 185
Funding Modification 184
Funding Modification 183
Modification 182
Funding Modification 181
Funding Modification 180
Funding Modification 179
Funding Modification 178
Funding Modification 177
Funding Modification 176
Funding Modification 173
Funding Modification 172
Funding Modification 171
Funding Modification 170
Funding Modification 166

Funding Modification 165

Funding Modification 164

Funding Modification 163

Modification 162

Funding Modification 161

Funding Modification 160

Funding Modification 159

Funding Modification 158

Funding Modification 157

Funding Modification 156

Funding Modification 155

Funding Modification 154

Funding Modification 153

Funding Modification 152

Modification 150 Reserved, No action will be taken using this modification number

Funding Modification 149

Funding Modification 148

Modification 147 Reserved, No action will be taken using this modification number

Funding Modification 146

Funding Modification 145

Funding Modification 144

Funding Modification 143

Funding Modification 142

Funding Modification 140

Funding Modification 139

Funding Modification 138

Funding Modification 136

Funding Modification 135

Modification 134

Funding Modification 133

Modification 132

Funding Modification 131

Funding Modification 130

Funding Modification 129

Funding Modification 128

Funding Modification 126

Funding Modification 125

Funding Modification 124

Funding Modification 123

Funding Modification 122

Funding Modification 120

Funding Modification 119

Funding Modification 115

Funding Modification 114

Funding Modification 113

Funding Modification Number 109

Modification Number 108
Funding Modification Number 106
Funding Modification Number 102
Funding Modification Number 101
Funding Modification Number 100
Funding Modification Number 099
Funding Modification Number 098

Modification 327

The purpose of this modification is to update the FY2017 NNSA and SPP Actual Cost and Fee amounts through September 20, 2017, and to add the estimated FY2018 NNSA and SPP Estimated Cost and Fee amounts through November 30, 2017, as set forth in Attachment 1.

Modification 326

The purpose of this modification is to extend the period of performance through November 30, 2017, in accordance with Part I, Contract Clauses, Section I Clause 73, FAR 52.237-3, Continuity of Services.

Modification 320

The purpose of this modification is to modify Section I Clause 148, DEAR 970.5244-1, Contractor Purchasing System, due to the revocation of EO 13673, Fair Pay and Safe Workplaces, and add two NNSA Supplemental Directives to Section J, Appendix C, List of Applicable Laws, Regulations, and DOE Directives, as set forth in Attachment 1.

Modification 317

The purpose of this modification is to exercise an option to extend the period of performance by three months in accordance with Part I, Contract Clauses, Section I Clause 23-2, FAR 52.217-9, Option to Extend the Term of the Contract.

Modification 313

The purpose of this modification is to exercise an option to extend the period of performance by one month in accordance with Part I, Contract Clauses, Section I Clause 23-2, FAR 52.217-9, Option to Extend the Term of the contract.

Modification 298

Part I, *The Schedule*, Section B, *Supplies or Service and Prices/Costs*, Contract Clause B-2, "Contract Type and Value," is modified to reflect FY2016 Actual Cost and Fee amounts and to revise the estimated FY2017 NNSA and Strategic Partnership Program (SPP) Estimated Costs, Maximum Available Performance Incentive Fee, and SPP Fixed Fee figures through May 31, 2017. As such, paragraphs (a)(1) and (b)(3) are modified by deleting the text and substituting in lieu thereof the following language.

Modification 297

The purpose of this modification is to exercise an option to extend the period of performance by four months in accordance with Part I, Contract Clauses, Section I Clause 23-2, FAR 52.217-9, Option to Extend the Term of the Contract.

Modification 263

The purpose of this modification is to update Clause B-2, Contract Type and Value, to reflect FY2015 actual Cost and Fee figures; to add FY2016 NNSA and SPP Estimated Costs, Maximum Available Performance Incentive Fee, and SPP Fixed Fee figures; and to change the references from “WFO” to “SPP” to reflect a recent agency terminology change.

Modification 252

Part I, *The Schedule*, Section B, *Supplies or Services and Prices/Costs*, Contract Clause B-2, “Contract Type and Value,” is modified to—

- a. Correct the total FY2014 WFO Estimated Cost entry from \$94,726,456 to \$89,644,106. The higher figures incorrectly reflect the combined FY2014 WFO Estimated Cost and WFO Fixed Fee values.
- b. Revise the total WFO Estimated cost and WFO Fixed Fee for FY 2015.

As such, paragraphs (a)(1) and (b)(3) are modified by deleting the text and substituting in lieu thereof the following language.

Modification 234

Part I, *The Schedule*, Section B, *Supplies or Service and Prices/Costs*, Contract Clause B-2, “Contract Type and Value”, is modified to update the total estimated NNSA and WFO contract cost and fee figures for FY 2014 based on actual figures. As such, paragraphs (a)(1) and (b)(3) are modified by deleting the text and substituting in lieu thereof the following language.

Modification 225

Part I, *The Schedule*, Section B, *Supplies or Service and Prices/Costs*, Contract Clause B-2, “Contract Type and Value”, is modified to add the total estimated NNSA and WFO contract cost and fee figures for FY 2015. As such, paragraphs (a)(1) and (b)(3) are modified by deleting the text and substituting in lieu thereof the following language.

Modification 199

Part I, *The Schedule*, Section B, *Supplies or Service and Prices/Costs*, Contract Clause B-2, “Contract Type and Value”, is modified to revise the FY2013 cost and fee values to reflect actual cost and fee values. As such, paragraphs (a)(1) and (b)(3) are modified by deleting the text and substituting in lieu thereof the following language.

Modification 193

Part I, *The Schedule*, Section B, *Supplies or Service and Prices/Costs*, Contract Clause B-2, “Contract Type and Value”, is modified to add the total estimated contract cost and fee for FY 2014. As such, paragraphs (a)(1) and (b)(3) are modified by deleting the text and substituting in lieu thereof the following language.

Modification 182

Part I, *The Schedule*, Section B, *Supplies or Service and Prices/Costs*, Contract Clause B-2, “Contract Type and Value”, is modified to revise the total estimated contract cost and fee for FY 2013. As such, paragraphs (a)(1) and (b)(3) are modified by deleting the text and substituting in lieu thereof the following language

Modification 162

Part I, *The Schedule*, Section B, *Supplies or Service and Prices/Costs*, Contract Clause B-2, “Contract Type and Value”, is modified to increase/revise the FY 2012 to reflect actual cost and fee values and to add the total estimated contract cost and fee for FY 2013. As such, paragraphs (a)(1) and (b)(3) are modified by deleting the text and substituting in lieu thereof the following language.

Modification 134

Part I, *The Schedule*, Section B, *Supplies or Service and Prices/Costs*, Contract Clause B-2, “Contract Type and Value”, is modified to bring the cost and fee totals into alignment based on actual cost incurred and fee earned through FY 2011. As such, paragraphs (a)(1) and (b)(3) are modified by deleting the text and substituting in lieu thereof the following language.

Modification Number 108

Part I, *The Schedule*, Section B, *Supplies or Service and Prices/Costs*, Contract Clause B-2, “Contract Type and Value”, is modified to bring the cost and fee totals into alignment in recognition of actual cost incurred and fee earned through FY 2010 and to increase the total estimated contract cost and fee for FY 2011. As such, paragraphs (a)(1) and (b)(3) are modified by deleting the text and substituting in lieu thereof the following language.

Modification Number 095

Part I, *The Schedule*, Section B, *Supplies or Service and prices/Costs*, Contract clause B-2, “Contract Type and Value,” is modified to decrease the FY2010 Work-For-Others Cost and Fixed Fee base from \$96,000,000 to \$92,000,000. This change is being made to reflect the total change that was intended to be accomplished in Modification A093.

Modification Number 093

Part I, *The Schedule*, Section B, *Supplies or Service and prices/Costs*, Contract clause B-2, “Contract Type and Value,” is modified to increase the FY2010 NNSA Estimated Cost and Maximum Available Performance Incentive Fee in recognition of a \$10,000,000 increase associate with the National Center for National Security (NCNS) and a \$10,000,000 decrease in the FY2010 Work-For-Others Cost and Fixed Fee based on the lower than anticipated influx of WFO funding.

Modification 132

Modification Number 092

Part I, *The Schedule*, Section B, *Supplies or Service and Prices/Costs*, Contract Clause B-2, “Contract Type and Value”, is modified to increase the total estimated contract cost and fee for FY 2012. As such, paragraphs (a)(1) and (b)(3) are modified by deleting the text and substituting in lieu thereof the following language.

SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS**B-1 SERVICES BEING ACQUIRED**

The Contractor shall, in accordance with the terms and conditions of this Contract, provide the personnel, equipment, materials, supplies, and services (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to, providing its best efforts to effectively and efficiently manage and operate the Nevada Test Site and satellite facilities for the U.S. Department of Energy (DOE) National Nuclear Security Administration (NNSA).

B-2 CONTRACT TYPE AND VALUE

This Contract is a cost-reimbursement management and operating type contract employing performance incentives. The Estimated Cost, Performance Incentive Fee, and Fixed Fee for **Strategic Partnership Projects** are set forth below.

- (a) (1) The Estimated Cost (exclusive of the Contractor's Fee) is set forth below:

Contract Period	NNSA Estimated Cost		SPP/SIPP Estimated Cost
01 Oct 17 – 30 Nov 17*	\$65,730,218		\$12,584,552
01 Oct 16 – 30 Sep 17*	\$395,537,000		\$84,945,729
01 Oct 15 - 30 Sep 16	\$446,621,337		\$81,237,404
01 Oct 14 - 30 Sep 15	\$410,270,963		\$77,076,925
01 Oct 13 - 30 Sep 14	\$412,001,571		\$89,644,106
01 Oct 12 - 30 Sep 13	\$396,262,710		\$92,415,465
01 Oct 11 - 30 Sep 12	\$408,497,017		\$90,806,077
01 Oct 10 - 30 Sep 11	\$430,396,064		\$89,645,129
01 Oct 09 - 30 Sep 10	\$459,952,227		\$88,151,530
01 Oct 08 - 30 Sep 09	\$330,715,888		\$86,833,412
01 Oct 07 - 30 Sep 08	\$406,487,448		\$81,526,409
01 Oct 06 - 30 Sep 07	\$416,583,745		\$91,343,940
01 Jul 06 - 30 Sep 06	\$119,358,189		\$23,149,416
Transition (01 Apr 06 - 30 Jun 06)	\$0		\$0
SUBTOTAL	\$4,698,414,377		\$989,360,094
TOTAL ESTIMATED COST		\$5,687,774,471	

* These are Estimated Cost figures. Actual figures will be incorporated upon finalization of annual cost figures.

- (b) (3) The total available fee pool is a combination of the Performance Incentive Fee and Fixed Fee related to the **Strategic Partnership Project** effort. This total available fee pool for the specified period is set forth below:

Contract Period	Maximum Available Performance Incentive Fee		SPP/SIPP Fixed Fee
01 Oct 17 – 30 Nov 17	\$4,601,115		\$748,781
01 Oct 16 – 30 Sep 17	\$27,688,000		\$5,054,271
01 Oct 15 - 30 Sep 16	\$24,381,720		\$5,054,271
01 Oct 14 - 30 Sep 15	\$21,835,948		\$4,492,685
01 Oct 13 - 30 Sep 14	\$21,313,112		\$5,082,350
01 Oct 12 - 30 Sep 13	\$22,230,027		\$5,391,222
01 Oct 11 - 30 Sep 12	\$22,629,701		\$5,391,222
01 Oct 10 - 30 Sep 11	\$22,711,395		\$5,222,740
01 Oct 09 - 30 Sep 10	\$19,293,505		\$5,149,998
01 Oct 08 - 30 Sep 09	\$21,529,431		\$5,166,588
01 Oct 07 - 30 Sep 08	\$20,818,339		\$4,720,551
01 Oct 06 - 30 Sep 07	\$19,264,822		\$5,181,581
01 Jul 06 - 30 Sep 06	\$4,256,769		\$981,912
Transition (01 Apr 06 - 30 Jun 06)	\$0		\$0
SUBTOTAL	\$252,553,884		\$57,638,172
TOTAL ESTIMATED FEE		\$310,192,056	

** Based on FDO approval, this was a fixed fee figure for this three-month period.

- (c) Up to thirty-five percent (35 percent) of the total available fee pool shown in (b)(3) above for a given contract period may be paid to the Contractor provisionally in equal monthly increments of one-twelfth (1/12) of the total available fee pool amount per month. The final determination of fee will be made by the Fee Determining Official (FDO), in accordance with the fee clauses of this Contract. In the event that overpayment results from the payment of fee on a provisional basis, the Contractor shall reimburse such overpayment to the Government upon demand, payable with interest in accordance with the Section I Clause entitled "Interest".
- (d) In the event Congressional appropriation deviates by more than (plus or minus) 25 percent from the "Laboratory Table" in the President's Budget annual requests, the Contracting Officer shall unilaterally modify the contract to adjust the Maximum Available Incentive Fee based on NNSA fee policy.
- (e) Funds Obligated through Modification No. 335 \$ 5,730,481,105.88
 Funds Obligated by Modification No. 336 \$ (77,641,811.96)
 **SPP - AFP 25
 Funds Obligated since Inception of Contract: \$ 5,652,839,293.92

**Detail of SPP Funds Obligated by this Modification	Total SPP Funds Obligated
Reimbursable - Federal	(\$76,647,753.69)

Reimbursable – Non-Federal	(\$986,051.73)
Tech Transfer	(\$8,006.54)
Total Funds	(\$77,641,811.96)

B-3 AVAILABILITY OF APPROPRIATED FUNDS

Except as may be specifically provided to the contrary in the Contract's Section I clause entitled "Nuclear Hazards Indemnity Agreement," the duties and obligations of the Government hereunder calling for the expenditure of appropriated funds are subject to the availability of funds appropriated by Congress, which the NNSA may legally spend for such purposes.

Modification Number 146

Contract Clause B-9999 is hereby updated to incorporate American Recovery and Reinvestment Act Work Authorization RA-10-002, Rev 2 into the contract.

Modification Number 099

Contract Clause B-9999 is hereby updated to include the amount of \$60,000.00 for Work Authorization RA-10-002.

Modification Number 096

The following reference is added to Clause B-9999 and Work Authorization RA-10-001, Revision 05 is hereby incorporated into the contract. This revision accomplishes an administrative change to update previously interim FAR clauses 12-15 and administratively corrects three project codes set forth in the Accounting & Appropriation Data table under Paragraph E.

B-9999 AMERICAN RECOVERY AND REINVESTMENT ACT WORK VALUES:

Total Funds authorized including maximum available performance fee, if any, for work funded under the American Recovery and Reinvestment Act (Recovery Act).

<u>Year</u>	<u>Total Funds Authorized</u>
2010	Work Authorization RA-10-002 Rev 02: \$80,642.49
2010	Work Authorization RA-10-001 Rev 05: \$9,550,000.00**
2009	Work Authorization RA-09-001 M6: \$33,850,358.00*

(* The definitized value of the work scope set forth in this Work Authorization is \$35,678,000.00, however, only \$33,850,358.00 of this effort will be supported with Recovery Act funding. The remaining \$1,827,642.00 necessary to support the workscope identified under this Work Authorization will be funded by DOE EM at such time as the Recovery Act funding is exhausted.)

The Contractor shall not start work funded under the Recovery Act until the Contractor receives a Work Authorization and funds are placed into the Work Authorization. The contractor is authorized to incur costs not to exceed the amount as stipulated under each Work Authorization, consistent with the other Contract terms and conditions, including the Work Authorization(s). Additional fee, if any, for the performance of work under the Recovery Act shall be determined by NNSA in accordance with Section B-2 and applicable NNSA policy.

**** Note: The definitized value of the work scope set forth in Work Authorization RA-10-001 is \$10,118,220.00; however, only \$9,550,000.00 is currently available. In the event additional funding is not received, any outstanding work scope identified under WA RA-10-001 will be funded by DOE EM at such time as the Recovery Act funding is exhausted.**

SECTION C – STATEMENT OF WORK

C-1 STATEMENT OF WORK

1.0 General

The Contractor shall, in accordance with the terms and conditions of this Contract, provide the management expertise and leadership necessary and appropriate to accomplish the missions assigned by the National Nuclear Security Administration (NNSA) through the NNSA/Nevada Site Office (NNSA/NSO) at the Nevada Test Site (NTS) and satellite facilities and to perform the work described in this Statement of Work (SOW).

Inasmuch as the assigned missions of the NTS and satellite facilities are dynamic, this SOW is not intended to be exclusive or restrictive, but is intended to provide a broad framework and general scope of the work to be performed at the NTS and satellite facilities. This SOW does not represent a commitment to, or imply funding for, specific projects or programs. All projects and programs from NNSA or other work sponsors will be authorized by NNSA in accordance with the terms and conditions of this Contract.

Work under this Contract, which encompasses nuclear facilities and nonnuclear facilities including high hazard operations, shall comply with all applicable Federal, state, and local statutes and regulations, and all applicable Department of Energy (DOE) directives and NNSA policies. (Applicable DOE directives and NNSA policies shall hereinafter be referenced as DOE/NNSA directives.) The term “nuclear facilities” is defined as those facilities, activities, or operations that involve, or will involve, radioactive and/or fissionable materials in such form and quantity that a nuclear hazard potentially exists to workers, the public, or the environment. “Nonnuclear facilities” are those facilities, activities, or operations where a nuclear hazard potential does not exist. “High hazard operations” are those activities or operations such as detonation of high explosives, planned chemical releases, and live fire exercises. The Contractor, in the performance of this Contract, shall implement national security programs; protect the environment; and ensure the safety, security, and health of employees and the public. In addition to performing the contract work, the Contractor shall implement appropriate program, project, and quality management systems to track progress and increase cost-effectiveness of work activities; balance good business decisions with fiscal efficiency (including implementing an effective make/buy process that reflects good value judgments); develop integrated plans and schedules to achieve program objectives on time; maintain sufficient resources to manage activities and execute technical projects throughout the life of a program; utilize appropriate technologies to reduce costs and improve performance; maintain facilities, infrastructure, and equipment necessary to

accomplish assigned missions; protect classified, controlled, and proprietary information; and accomplish work safely. In performing work under this Contract, the Contractor shall establish and maintain a cooperative working relationship with the Nuclear Weapons Laboratories (Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Sandia National Laboratories), as appropriate.

2.0 Nevada Test Site and Satellite Facilities Mission

The NTS is a unique expanse of Federally controlled land and facilities in a remote region of southern Nevada. The approximately 1,375 square miles that make up the NTS are surrounded by the U.S. Air Force Nellis Test and Training Range and unpopulated land controlled by the Bureau of Land Management. The biological, geological, hydrological, meteorological, and radiological environments are well characterized. The *Final Environmental Impact Statement for the Nevada Test Site and Off-Site Locations in the State of Nevada* and the associated Record of Decision allow for the execution of a variety of complex and unique projects and experiments while ensuring the protection of the public and the environment.

The NTS represents the United States' unique capability to support nuclear testing and complex dynamic experiments that involve Special Nuclear Materials or hazardous materials. These experiments, relying on integrated support from the Contractor, are conducted by the Nuclear Weapons Laboratories in support of the Stockpile Stewardship Program.

The basic purpose of this Contract is to provide support and infrastructure for experiments and activities at the NTS and satellite facilities. The Contractor shall be responsible for a wide range of activities (as elaborated below) in support of DOE/NNSA missions that include the following: nuclear explosives operations; remote field experiments and operations; physical and environmental science; nuclear waste management systems and technology; design and fabrication of electronic, mechanical, and structural systems; remote and robotic sensing; management of multi-laboratory facilities, mining, engineering, and construction operations; chemical, explosives, and hazardous materials systems and technologies; and waste management for various categories of waste (including, but not limited to, sewage/septic, solid waste, hazardous waste, low-level radioactive waste, low-level mixed waste, and transuranic and mixed transuranic waste). The Contractor shall be responsible for a wide-range of facilities, laboratories, and equipment that support the custom design, construction, and fielding of experimental systems ranging from small electronic and remote sensing packages to fielding complex systems in hostile environments for use anywhere in the world.

3.0 Programmatic Activities

3.1 Defense Experimentation and Stockpile Stewardship

The Contractor, in response to the requirements of and in coordination with the Nuclear Weapons Laboratories and other experimenters and users, shall provide the test beds, infrastructure, and appropriate scientific, engineering, and technical staff to support defense-related nuclear and nonnuclear experiments as well as other national security programs, including maintaining the NTS capability to conduct an underground nuclear test within the required readiness time.

The Contractor shall also provide similar technical and operational expertise in support of a wide variety of complex nonnuclear defense research and development experiments, many of which must be conducted in isolated and/or harsh environments.

3.2 Emergency Response and Nonproliferation

The Contractor, in response to the requirements of and in coordination with the national laboratories and other Federal, state, and local agencies and other users, shall provide laboratory and field capabilities to assess threats and manage radiological emergencies involving a variety of hazardous situations. The Contractor shall provide response and detection capabilities to the Nuclear Emergency Support Team, National Security Special Events, Aerial Measuring Systems, NNSA Accident Response Group, Federal Radiological Monitoring and Assessment Center, and other specialized groups of relevant expertise as may from time-to-time be organized during the term of the contract. The Contractor shall develop and support a broad array of critical response resources (including ground-based and airborne (fixed- and rotary-winged aircraft) analytical and logistic capabilities) that may be used to detect and deter the proliferation of nuclear weapons, devices, and materials, monitor suspect environmental and radiological sites, and aid in the characterization of radiologically contaminated locations both in the United States and abroad.

3.3 Environmental Management

The Contractor, in close working relationships with the Environmental Restoration contractor and other DOE/NNSA stakeholders, shall perform the onsite physical environmental restoration and waste management programs. In addition, the Contractor shall manage the staging, storage,

treatment, transportation, and disposal of wastes generated through operational and environmental restoration programs at the NTS or other NNSA locations. The Contractor shall minimize waste through pollution prevention and recycling activities.

The Contracting Officer may de-scope onsite cleanup from this SOW and transfer the scope to an NNSA Cleanup Contractor in accordance with Section H clause entitled “NNSA On-Site Cleanup.”

3.4 Other DOE and Non-DOE Support

The Contractor shall capitalize on the unique resources and capabilities available at the NTS and satellite facilities to perform and manage, compatible with NNSA work schedules, a variety of reimbursable work for other governmental organizations in support of a broad range of national security goals and programs.

3.5 Intelligence and Counterintelligence

The Contractor shall support the requirements of the Intelligence Community (IC) of which the Department of Energy (DOE) is a member. The Special Technologies Laboratory will support the DOE’s Office of Intelligence and Counterintelligence and the broader IC mission requirements to include acting as a lead integrator of multiple technologies, developed elsewhere in the community, into complete systems.

4.0 Operations, Facilities, and Infrastructure Support

4.1 Integrated Safety Management (ISM) System

The Contractor shall implement an ISM System that effectively establishes environment, safety, and health management programs and processes that support the safe performance of all work, including activities conducted for the NNSA/NSO through subcontractors or other entities.

The Contractor shall include, as part of the ISM System, an Environmental Management System. The Contractor shall ensure that environmental compliance activities meet all regulatory requirements and adequately protect the environment and public health.

The Contractor’s risk-based ISM System shall include but not be limited to accident prevention; criticality safety; nuclear safety; nuclear explosive and explosive safety; firearms safety; electrical, industrial, construction, and aviation safety; hazards identification; safety analysis and risk

management; fire prevention and protection/suppression; hazardous material and nuclear explosive packaging and transportation operations; and safety training.

The Contractor's health management program shall include industrial hygiene, health physics, radiological protection, occupational medicine, health auditing and surveys, and training. The Contractor shall cooperate with worker health studies conducted by other Federal agencies and contract/financial assistance researchers under NNSA and DOE sponsorship.

4.2 Safeguards and Security Management

The Contractor shall conduct safeguards and security programs including, but not limited to, physical and technical security planning, classified automated data processing security, personnel security, managing Classified Removable Electronic Media, classified information security, and classification/declassification. The Contractor shall interact effectively with the NNSA/NSO Protective Force Contractor to fully integrate safeguards and security at the NTS and designated satellite facilities. At some satellite facilities, such as Livermore Operations and Los Alamos Operations, the Contractor shall conduct operations security, entry and access control, and security education and awareness.

4.3 Nuclear Operations

The Contractor shall provide nuclear facility safety management at facilities, such as the Radioactive Waste Management Sites in Area 5 and Area 3, and the Radiological Nuclear Countermeasures Test and Evaluation Complex, and support to the Device Assembly Facility. The Contractor shall comply with all applicable nuclear safety related Federal regulations and DOE orders and other nuclear safety requirements (including reporting requirements and instructions) of NNSA.

4.4 Engineering, Design, and Construction

4.4.1 Facility Operations and Infrastructure

4.4.1.1 Project Management

The Contractor shall establish, maintain, and use a project management system, including an Earned Value Management System (EVMS) meeting the requirements of ANSI standard ANSI/EIA-748. The Contractor shall apply the project management system, using a graded approach, to all projects, including

programmatic research and development activities in support of funded programs and operating expense funded, general plant, and line-item construction projects.

The Contractor shall provide the skills and capabilities to develop, plan, and execute projects to ensure that all mission objectives are appropriately controlled and successfully implemented. This includes tracking cost, scope, schedule commitments, and reporting technical performance. Reporting shall be accomplished in accordance with prudent project management principles and as required by individual mission needs. The Contractor shall provide project management support to the national laboratories and other customers to facilitate cost estimating and scheduling for projects as needed.

The Contractor shall assist DOE through direct participation and other support in achieving DOE's energy efficiency goals and objectives in electricity, water, and thermal consumption, conservation, and savings, including goals and objectives contained in Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management. The Contractor shall maintain and update, as appropriate, its Site Plan (as required elsewhere in the contract) to include detailed plans and milestones for achieving site-specific energy efficiency goals and objectives. With respect to this paragraph, the Plan shall consider all potential sources of funds, in the following order: 1) the maximum use of private sector, third-party financing applied on a life-cycle cost effective basis, particularly from Energy Savings Performance Contracts and Utility Energy Services Contracts awarded by DOE; and 2) only after third-party financing options are evaluated, in the event that energy efficiency and water conservation improvements cannot be effectively incorporated into a private sector financing arrangement that is in the best interests of the Government, then DOE funding and funding from overhead accounts can be utilized.

4.4.1.2 Engineering and Scientific Services

The Contractor shall provide scientists, engineers,

and technicians with skills to match the support requirements of this SOW. The Contractor shall consult with program officials at NNSA, NNSA/NSO, the national laboratories, and other partners and customers to define the functions to be executed in achieving NNSA/NSO missions. The Contractor shall provide strategic staffing plans to meet long-range program projections.

The Contractor shall provide design and risk analysis, value engineering, configuration management, conceptual designs, preliminary designs, material testing, and surveying in support of engineering designs (Title I); final designs and construction drawings (Title II); and as-built drawings pursuant to construction inspections, surveying, and material testing (Title III) services for activities supporting NNSA/NSO and its programmatic customers.

The Contractor shall provide the skills necessary to accomplish this work to the safety and quality levels required for all facilities up to and including nuclear facilities, as applicable, while meeting demanding customer time constraints and milestones.

4.4.1.3 Construction

The Contractor shall design, construct, or modify buildings, underground excavations and facilities, surfaced areas, utility components, and other types of infrastructure projects as required by NNSA/NSO to meet mission goals and objectives. The Contractor must be capable of meeting appropriate quality assurance requirements, including the requirements for nuclear facilities.

4.4.2 Infrastructure and Asset Maintenance and Management

The Contractor shall manage real and personal property assets to support existing and future NNSA missions and programs at the NTS and satellite facilities. This includes the reduction of deferred maintenance, maintenance of current assets, and life cycle replacement and/or recapitalization of building and infrastructure major systems and subcomponents. Reporting shall be accomplished in accordance with NNSA/NSO requirements.

4.4.3 Conduct of Operations

The Contractor shall conduct operations with appropriate formality and discipline applying an NNSA/NSO-approved graded approach, up to and including nuclear facility rigor as appropriate.

4.4.4 NTS Operations

4.4.4.1 Stewardship of the NTS

With the exception of facilities specifically assigned to the Nuclear Weapons Laboratories, the Contractor shall manage the land, facilities, and personal property throughout the NTS including, but not limited to: maintenance programs; power systems; road systems; sewage systems; landfills; water systems; fleet and equipment operations; aviation-related facilities; housing, custodial, and food services; commuter services; and communication services. For those facilities assigned to the Nuclear Weapons Laboratories, the Contractor shall provide programmatic support to the Nuclear Weapons Laboratories as required and funded by the appropriate program.

4.4.4.2 Medical Services

The Contractor shall provide personnel who are graduates of approved programs and licensed by their respective boards in the state of Nevada to provide emergency, non-occupational palliative, and occupational medical services to all workers and visitors at the NTS. The Contractor shall maintain adequate documentation of services provided.

4.4.4.3

4.4.4.3 NTS Emergency Fire and Rescue Response Services

The Contractor shall provide trained and qualified personnel to provide emergency fire and rescue response services, including firefighters and paramedics. Firefighters shall meet applicable National Fire Protection Association standards. Ambulance service shall be a state of Nevada permitted industrial ambulance service. Paramedic service and cooperative medical and fire and rescue response to surrounding areas is covered by NNSA/NSO Memoranda of

Understanding. The Contractor shall maintain and operate fire stations, fire alarm and fire suppression systems, and various fire fighting and rescue equipment at the NTS.

4.4.4.4 Site Operations

The Contractor shall coordinate, schedule, and deconflict all operations and activities occurring external to facilities at the NTS including, but not limited to, site access coordination, air space and ground use, incident and emergency notifications, and emergency response dispatch. This includes providing staffing for the NTS Site Operations Center.

4.4.4.5 Emergency Management Operations

The Contractor shall provide for emergency planning and preparedness activities for the NNSA/NSO. This shall include providing, managing, and maintaining the capability to respond to and mitigate emergencies in accordance with the NNSA/NSO Consolidated Emergency Management Plan. The Contractor shall manage the NNSA/NSO Emergency Operations Center located in North Las Vegas, Nevada, in accordance with established procedures and coordinate the reporting of operational information on a 24-hour basis. In addition, the Contractor shall operate the Emergency Management Center located at the NTS and shall maintain an alternate Emergency Operations Center located at the Remote Sensing Laboratory-West.

5.0 Business and Administrative Management

5.1 Financial Management

The Contractor shall maintain a financial management system suitable to provide proper accounting in accordance with NNSA requirements, generally accepted accounting principles, cost accounting standards, statutory requirements, and applicable DOE/NNSA directives. The system shall have effective internal controls for all expenditures and include sound financial stewardship and public accountability.

5.2 Purchasing Management

The Contractor shall implement and maintain an NNSA/NSO-approved purchasing system to provide required purchasing support and subcontract administration. The purchasing system shall incorporate quality assurance requirements and be responsive to the needs of customer requirements and programmatic milestones. The Contractor shall, in accordance with their approved purchasing system, acquire materials, supplies, equipment, facilities, property, and services required in connection with the work under this Contract that are not furnished by the Government.

5.3 Personal Property Management

The Contractor shall have an NNSA-approved management system for overall integrated planning, acquisition, maintenance, operation, control, accountability, utilization, and disposal of Government-owned personal property.

5.4 Information Technology Management

The Contractor shall implement and maintain information technology services and systems for organizational operations and for activities involving general purpose programming, data collection, data processing, report generation, general in-house software development, telecommunication systems, and computer security. Telecommunications systems include such elements as telephones and cellular phones, data networks, video multimedia, microwave, satellite, radio, pagers, and other spectrum-dependent systems.

5.5 Audits and Assessments

The Contractor shall conduct internal audits and audits of subcontractor work and costs. The Contractor shall ensure NNSA has access to all audit working papers, including working papers, of subcontractors performing audits for the prime contractor. The Contractor shall support external audits, reviews, appraisals, and other reviews conducted by NNSA or its contractors of other NNSA/DOE M&O Contractors. The Contractor shall provide assets, expertise, and capabilities to conduct assessments against all operating requirements, up to and including nuclear facilities. The Contractor shall conduct an ongoing self-assessment process to assess performance in programmatic missions, science and technology programs, ISM, quality assurance, and supporting operations and administration.

5.6 Communications and Public Affairs

The Contractor shall conduct communications, information, and public

affairs programs, including internal and external communications; community involvement and outreach; interactions with the media, businesses, and the scientific and technical community; and liaison with Congressional offices and local, state, and Federal agencies. Furthermore, the Contractor shall provide public affairs functions necessary to support the national emergency programs supported by NNSA/NSO.

5.7 Community Relations

The Contractor shall develop and foster relationships and support with state, county, and local community organizations. In particular, the Contractor shall initiate a technical cooperative program with the Nevada state university system that builds technical capability in the universities based on programmatic funding and deliverables and fosters a resource pool for next generation staff to support the national security missions.

5.8 Human Resources Management

The Contractor shall provide a human resources management system that includes staffing and recruiting, compensation and benefits administration, and other related personnel services to attract and retain a highly qualified work force that promotes work force diversity.

5.9 Labor Relations

The Contractor shall provide labor relations management support services for all matters relating to bargaining unit employees and collective bargaining agreements, including such activities as hiring and terminations; work rules development and administration; dispute resolution; wage and fringe benefits; and labor agreement negotiations and compliance.

5.10 Legal

The Contractor shall maintain a legal program to support contract activities such as those related to patents, licenses, and other intellectual property rights; subcontracts; technology transfer; cooperative research and development agreements; environmental compliance and protection; labor relations; and litigation and claims.

5.11 Real Property Management

The Contractor shall manage Government-owned and Contractor-leased real property to further national interests and to perform NNSA statutory missions. The Contractor shall perform overall integrated planning, acquisition support, maintenance, operation, management, and disposition

of Government-owned real property and Contractor-leased facilities and infrastructure.

5.12 Strategic Planning

The Contractor shall conduct a strategic planning process and develop appropriate plans in consideration of NNSA/NSO-provided guidance and strategic planning material to assure consistency with NNSA missions and goals.

5.13 Training

The Contractor shall provide training and education services in support of the activities performed under this Contract.

5.14 Other Administrative Services

The Contractor shall provide and maintain other administrative services, such as communications systems; diversity management program; employee assistance program; transportation and traffic management; a records management system; and a system of records for individuals, including those related to personnel radiation exposure information, medical, safety, and health.

6.0 Potential Mission Expansion Areas

The Contractor shall provide and manage technical and other services as necessary in support of future expansion of NTS and satellite facilities' services to current and future customers at various locations as directed by the Contracting Officer.

7.0 Reports and Other Deliverables

The Contractor shall prepare, submit, disseminate, or otherwise publish financial, schedule, scientific, technical plans and reports, and other information and deliverables consistent with the needs of the various programmatic sponsors and other customers or as required elsewhere in the contract or as specifically required by the Contracting Officer.

SECTION D - PACKAGING AND MARKING

D-1 PACKAGING AND MARKING

Packaging and marking of items to be delivered shall be in accordance with work authorization requirements or other written directions of the Contracting Officer or the Contracting Officer's Representative (COR).

SECTION E - INSPECTION AND ACCEPTANCE**E-1 FAR 52.246-5 INSPECTION OF SERVICES – COST REIMBURSEMENT (APR 1984)**

- (a) *Definition.* “Services,” as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable, at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again, in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may:
 - (1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and
 - (2) Reduce any fee payable under the contract to reflect the reduced value of the services performed.
- (e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may:
 - (1) By contract or otherwise perform the services and reduce any fee payable by an amount that is equitable under the circumstances or
 - (2) Terminate the contract for default.

E-2 INSPECTION AND ACCEPTANCE

The Contracting Officer or any other duly authorized representative shall accomplish inspection of all activities and acceptance for all work and effort under this Contract.

Modification 284

Part I, *The Schedule*, Section F, *Deliveries or Performance*, Contract clause F-2, “Period of Performance”, is modified to extend the contract period by four months. As such, Clause F-2 is modified by deleting the text in its entirety and submitting in lieu thereof the following language.

Modification 162

Part I, *The Schedule*, Section F, *Deliveries or Performance*, Contract clause F-2, “Period of Performance”, is modified to extend the contract period by one year in recognition of the FY2012 fee determination in which an award term year was earned in accordance with Contract Clause H-8, “Award Term”. As such, Clause F-2 is modified by deleting the text in its entirety and submitting in lieu thereof the following language.

Modification 134

Part I, “The Schedule, Section F, *Deliveries or Performance*, Contract Clause F-2, “Period of Performance”, is modified to extend the contract period by one year in recognition of the FY2011 fee determination in which an award term year was earned in accordance with Contract Clause H-8, “Award Term”. As such, Clause F-2 is modified by deleting the text in its entirety and substituting in lieu thereof the following language.

Modification 108

Part I, “The Schedule, Section F, *Deliveries or Performance*, Contract Clause F-2, “Period of Performance”, is modified to extend the contract period by one year in recognition of the FY2010 fee determination in which an award term year was earned in accordance with Contract Clause H-8, “Award Term”. As such, Clause F-2 is modified by deleting the text in its entirety and substituting in lieu thereof the following language.

SECTION F - DELIVERIES OR PERFORMANCE

F-1 PLACE OF PERFORMANCE

The work under this Contract is to be carried out at a variety of locations, but the principal place of performance will be at the Nevada Test Site in Nye County, Nevada. Work is also conducted at satellite facilities located in North Las Vegas (NLV), Nevada (80 acres); the Remote Sensing Laboratory (RSL) at Nellis Air Force Base (RSL-West) (35 acres); RSL at Andrews Air Force Base (RSL-East) in Washington, D.C. (2 acres); the Special Technologies Laboratory (STL) in Santa Barbara, California; support offices for Lawrence Livermore National Laboratory in Livermore, California (Livermore Operations), and Los Alamos National Laboratory in Los Alamos, New Mexico (Los Alamos Operations); and other locations as required.

F-2 PERIOD OF PERFORMANCE

The term of this Contract shall be for the period of July 1, 2006 through November 30, 2017, unless sooner reduced, terminated, or extended in accordance with the provisions of this Contract. The period from April 1, 2006 through September 30,

2006, shall be for the transition activities identified in the Contract Section J, Appendix G, entitled “Contractor’s Transition Plan.” The Contractor’s responsibility for management and operation of the Nevada National Security Site and satellite facilities against the Statement of Work shall start on July 1, 2006.

F-3 FAR 52.242-15 STOP-WORK ORDER (AUG 1989) ALTERNATE I (APR 1984)

- (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 order 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 a proposal 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.

No other changes are made as a result of this modification. All other terms and conditions remain unchanged.

END OF MODIFICATION

SECTION G - CONTRACT ADMINISTRATION DATA

G-1 GOVERNMENT CONTACTS

- (a) The NNSA Nevada Site Office (NNSA/NSO) contracting officers are the Administrative Contracting Officers (ACOs) responsible for this Contract and are the Contractor's primary points of contact for all matters, except as identified in (b) below, regarding this Contract. The NNSA/NSO contracting officers can be reached at:

Nevada Site Office
U.S. Department of Energy
National Nuclear Security Administration
232 Energy Way
North Las Vegas, NV 89030

Telephone: (702) 295-1560 and (702) 295-6362

- (b) The Patent Counsel, Office of Chief Counsel, NNSA Service Center, is the Contractor's focal point for items concerning patent, intellectual property, technology transfer, copyright, open source, licenses, and technical data issues. The Patent Counsel can be reached at DOE/NNSA Service Center, Office of Chief Counsel, P.O. Box 5400, Albuquerque, New Mexico, 87185-5400. Telephone (505) 845-5172.

- (c) To promote timely and effective administration, correspondence submitted under this Contract shall contain a subject line commencing with the Contract Number, as illustrated below:

“SUBJECT: Contract DE-AC52-06NA25946, Request for Subcontract Placement Approval.”

G-2 CONTRACTOR CONTACT

The Contractor's General Manager is responsible for all matters regarding this Contract.

Modification 269

Part II, Section H, *Special Contract Requirements*, Clause H-18, WORKFORCE TRANSITION, CONTRACTOR COMPENSATION, BENEFITS, PENSION, AND LABOR RELATIONS, is modified by adding the following text immediately after subparagraph (d)(2)(ii)(I). (Note: The new text does not add new requirements, but rather provides the criteria used to determine whether or not Contracting Officer approval is required when an annual Compensation Increase Plans is submitted.)

Modification 255

Part I, Section H, *Special Contract Requirements*, is modified by adding Clause H-43, *Management and Operating Contractor (M&O) Subcontract Reporting (Sep 2015)*, as set forth below.

Modification 251

Part I, The Schedule, Section H, *Special Contract Requirements*, is modified by deleting the text of Clause H-41, *Conference Spending (Management and Operating Contracts)* in its entirety and inserting new clause *Conference Management* as follows:

Modification 174

Deleting the text of Clause H-18, Workforce Transition, Contractor Compensation, Benefits, Pension, and Labor Relations, in its entirety and substituting the following text in lieu thereof:

Deleting the text of Clause H-19, Workers Compensation, in its entirety and substituting the following text in lieu thereof:

Modification 168

Part I, The Schedule, Section H, *Special Contract Requirements*, is modified by adding Clause 41, *Conference Costs*, as set forth below.

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H-1 PERFORMANCE DIRECTION

- (a) The Contractor is responsible for the management and operation of the Nevada Test Site (NTS) and satellite facilities in accordance with the Terms and Conditions of the Contract, duly issued Work Authorizations (WAs), and written direction and guidance provided by the Contracting Officer and the Contracting Officer's Representatives (CORs). NNSA/NSO is responsible for establishing the work to be accomplished, the applicable standards and requirements to be met, and overseeing the work of the Contractor. The Contractor shall use its expertise and ingenuity in contract performance to most effectively, efficiently, and safely accomplish the work called for by this Contract.
- (b) Only the Contracting Officer may issue, modify, and priority rank WAs.

- (c) (1) The Contracting Officer and the NNSA Administrator will appoint, in writing, specific NNSA employees as CORs with the authority to issue Performance Direction to the Contractor. CORs are authorized to act within the limits of their delegation letter. A copy of each letter will be provided to the Contractor. COR functions include technical monitoring, inspection, and other functions of a technical nature not involving a change in the scope, cost, or Terms and Conditions of the contract. The COR is authorized to review and approve technical reports, drawings, specifications, and technical information delivered by the Contractor.
- (2) The Contractor must comply with written Performance Directions that are signed by the COR and–
 - (i) Redirect the contract effort, shift work emphasis within a work area or a WA, further define or otherwise serve to accomplish the Statement of Work (SOW) or
 - (ii) Provide information that assists in the interpretation of drawings, specifications, or technical portions of the work description.
- (3) Performance direction does not–
 - (i) Authorize the Contractor to exceed the funds obligated on the contract
 - (ii) Authorize any increased cost or delay in delivery in a WA Entitle the Contractor to an increase in fee or
 - (iii) Change any of the terms or conditions of the contract.
- (d) The Contractor shall accept only Performance Direction provided in writing by a COR and that is within the SOW and a WA.
- (e) (1) The Contractor shall promptly comply with each duly issued Performance Direction unless the Contractor reasonably believes that the Performance Direction violates this clause. If the Contractor believes the Performance Direction violates this clause, the Contractor shall suspend implementation of the Performance Direction and promptly notify the Contracting Officer of its reasons for believing that the Performance Direction violates this clause. Oral notifications to the Contracting Officer shall be confirmed in writing within ten days of the oral notification.
- (2) The Contracting Officer will determine if the Performance Direction is within the SOW and WA. This determination will be issued in writing and the Contractor shall promptly comply with the Contracting Officer's

direction. If it is not within the SOW or WA, the Contracting Officer may issue a change order pursuant to the Contract's Section I clause entitled "Changes."

- (f) The Contracting Officer and the Contractor agree to maintain full and open communication at all times, and on all issues affecting contract performance, during the term of this Contract.

H-2 CONTRACTOR ASSURANCE SYSTEM

The Contractor shall develop a Contractor Assurance System that is approved and monitored by the Contractor's Parent Organization(s). The Contractor's Assurance System, at a minimum, shall have the following key attributes:

- (a) A comprehensive description of the Contractor Assurance System with risks, key activities and accountabilities clearly identified.
- (b) A process for notifying the Contracting Officer of significant assurance system changes.
- (c) Rigorous, risk based credible self-assessments, feedback and improvement activities, including utilization of nationally recognized experts, and other independent reviews to assess and improve work processes and independent risk and vulnerability studies. The Contractor is encouraged to seek third party certifications (such as Voluntary Protection Program and ISO 9001 or ISO 14001), audits, peer reviews, and independent assessments with external certification or validation.
- (d) Identification and correction of negative performance, compliance, Integrated Safety Management (ISM), or Integrated Safeguards and Security Management (ISSM) trends before they become significant issues.
- (e) A method for validating assurance processes.
- (f) Integration of the assurance system with Contractor management systems including ISM and ISSM. The current Contractor's management systems that exist on the date of award will continue until the successor Contractor addresses the applicable contract requirements. For changes that do require NNSA/NSO approval, the Contractor will not implement a change until it is formally approved by NNSA and communicated to the Contractor by the Contracting Officer.
- (g) A process for defining performance metrics and targets that will lead to best in class industry performance, where efficient and cost-effective, without compromising ISM or ISSM.
- (h) Continuous feedback, including ISM and ISSM feedback, and performance

improvement.

- (i) An implementation plan that defines a transition period for the Contractor Assurance System.
- (j) A process for timely and appropriate communication to the Contracting Officer, including electronic access of assurance related information.

H-3 NNSA/NSO OVERSIGHT

- (a) The Contractor shall cooperate with NNSA oversight personnel, NNSA Facility Representatives, and subject matter experts in the performance of their assigned functions. NNSA reserves the right to inspect and oversee all activities of the Contractor at any time.
- (b) Oversight of Nuclear Safety, Nuclear Facility Operations, Nuclear Projects, Training and Qualifications, Safeguards & Security, High Hazard Activities, and Support Functions - For nuclear facility operations and other high hazard activities identified by the Contracting Officer, NNSA oversight shall be performed at the transaction level.
- (c) Oversight of Nonnuclear Facilities - Once the Contracting Officer is satisfied that the Contractor Assurance System is operating effectively, NNSA will conduct oversight of the Contractor's Nonnuclear Facilities operations at the systems level. NNSA, with Contractor input, shall develop performance metrics and performance targets as the means of defining NNSA's performance level expectations of the Contractor.
- (d) Oversight of Programs, Projects, and Business Systems – In accordance with the Contract's Section H clause entitled "Performance Based Management" the Parties will identify key end products and services that the Contractor provides to the Nuclear Weapons Complex. Oversight of the Contractor shall focus on whether the Contractor meets the performance objectives, measures and targets in the Performance Evaluation Plan (PEP), and the performance metrics and targets in the Contractor Assurance System.
- (e) With respect to paragraphs (c) and (d) above, if NNSA determines that the Contractor is not fully complying with applicable laws and regulations or that program performance or ISM/ISSM has degraded and that the Contractor is not taking appropriate and timely corrective action, NNSA may increase its oversight of these areas until performance is corrected.

H-4 ACCOUNTABILITY

The Contractor is responsible for the quality of its products and services and for ensuring that ISM and ISSM are integrated into its operations. The Contractor is also responsible

for assessing its operations, programs, projects and business systems, identifying deficiencies, and implementing needed improvements in accordance with the contract's terms and conditions. Where NNSA oversight has evaluated the Contractor's performance in meeting its obligations under this Contract, the Contractor shall not rely upon NNSA's assessment but is accountable for performing its own assessment of these areas.

H-5 PARENT ORGANIZATION'S OVERSIGHT PLAN

- (a) The Contractor shall provide an annual Parent Organization's Oversight Plan that details the Parent Organization's planned activities to monitor the Contractor's programmatic ISM and ISSM performance and to assist the Contractor in meeting its mission and operational requirements. Elements of the Oversight Plan may be incorporated into the Contractor's PEP. The annual Parent Organization's Oversight Plan is set forth as an appendix to the Contract's Section J. The Oversight Plan shall identify the Parent Organization's responsible official for administration of the plan.
- (b) The annual Parent Organization's Oversight Plan update shall be submitted to the Contracting Officer three months prior to the forthcoming fiscal year for Contracting Officer review and approval.
- (c) The estimated budget for the FY 2006 Parent Organization's Oversight Plan is \$ - 0 - . Costs associated with the annual Plan updates for FY 2007 and thereafter will be incorporated into this clause via supplemental agreement modification. Pursuant to the Contract's Section I clause entitled "Payments and Advances," such costs will be charged and accounted for as follows; however, in no event shall they be inconsistent with the cost principles in FAR Part 31. Costs may include travel, per diem, and other out-of-pocket costs, plus the actual salaries of the persons performing such services plus a percentage factor of salaries to cover fringe benefits and payroll taxes. The percentage factor will be applied in accordance with the Parent's Cost Accounting Standards Disclosure Statement. The amount reimbursable under this Contract shall be subject to Government audit.
- (d) The Contractor shall provide periodic reports of Parent activities and costs incurred as required by the Contracting Officer.
- (e) Budget limitations set forth in paragraph (c) above shall not be exceeded without prior Contracting Officer approval. The parties agree that the budgeted amounts for costs may be reviewed further for appropriateness and scope. In addition, the parties agree that a tracking process, acceptable to the Contracting Officer, providing sufficient detail for reasonable accountability, shall be implemented. The NNSA and Contractor agree to negotiate in good faith any adjustments to these budgeted amounts as a result of empirical information from any such tracking system or reviews.

H-6 UTILIZATION OF PARENT ORGANIZATION SYSTEMS

- (a) The costs of applying parent systems to site operations for the purpose of streamlining the Contractor's administrative, business or other systems, and parent services provided for that purpose are allowable if incurred in accordance with this clause. The use of parent systems is encouraged provided that such systems are more efficient and represent an overall cost savings to NNSA versus existing site systems and data is readily transferable to a successor contractor. The Contracting Officer must approve the Contractor's plan to use its parent corporate systems. Such system and related support services are not considered procurements as contemplated by the Contract clause entitled "Subcontracts."
- (b) The Contractor shall charge to the account of the DOE as provided in the Contract's Section I clause entitled "Payments and Advances," or as otherwise directed by the Contracting Officer, the amounts incurred for the above systems and related support services. Such amounts will be charged and accounted for as follows; however, in no event shall they be inconsistent with the cost principles in FAR Part 31 and DEAR Part 970.31. Costs may include travel, per diem, and other out-of-pocket costs, plus the actual salaries of the persons performing such services plus a percentage factor of salaries to cover fringe benefits and payroll taxes. The percentage factor will be applied in accordance with the Contractor's Cost Accounting Standards Disclosure Statement.
- (c) The Contractor shall provide periodic reports of activities and costs incurred as required by the Contracting Officer. The amount reimbursable under this Contract shall be subject to DOE/NNSA audit.
- (d) The total FY 2006 estimated budget for these systems and related support services is \$ - 0 -. Budget limitations shall not be exceeded without prior Contracting Officer approval. The Parties agree that the budgeted amounts for costs may be reviewed further for appropriateness and scope. In addition, the Parties agree that a tracking process, acceptable to the Contracting Officer, providing sufficient detail for reasonable accountability, shall be implemented. The Parties agree to negotiate in good faith any adjustments to these budgeted amounts as a result of empirical information from any such tracking system or reviews.

H-7 STANDARDS MANAGEMENT

- (a) Benchmark with Industry. The Contractor shall regularly benchmark with industry to identify best commercial standards and best business practices that will improve site operations with the goal of improving performance where effective and efficient without compromising ISM and ISSM.
- (b) Proposal of Alternative. Where best commercial standards or best business

practices are identified which may warrant a change to a procedure, standard, system of oversight or assessment mechanism (collectively referred to herein as “alternative”) in a DOE/NNSA Directive, the Contractor may develop a proposal(s) that describes (1) the nature and scope of the alternative; (2) the anticipated benefits, including any cost benefits, to be realized in performance under the contract; (3) a schedule for implementation of the alternative; (4) a detailed evaluation and a statement that the revised alternative is an effective, efficient means to meet the Directive without compromising ISM and ISSM; and (5) any additional information required by NNSA. The Contractor’s proposal(s) shall be submitted to the Contracting Officer. NNSA will evaluate the Contractor’s proposal and the Contractor will not implement a proposed change until it is formally approved by NNSA and communicated to the Contractor by the Contracting Officer.

- (c) Deficiency and Remedial Action. If, during performance of this Contract, NNSA determines that a previously approved alternative is not satisfactory, NNSA will require the Contractor to prepare a corrective action plan for NNSA approval. If NNSA is not satisfied with the corrective action taken, NNSA may direct corrective action to remedy the deficiency, including, if appropriate, the reinstatement of the Directive.
- (d) Laws and Regulations Excepted. The process described in this clause shall not affect the application of otherwise applicable laws and regulations of the United States, including DOE regulations.

H-8 AWARD TERM

- (a) Commencing in Fiscal Year 2008, the Contract’s term as set forth in the Contract’s Section F Clause entitled “Period of Performance” will be extended if, in its annual NNSA Performance Appraisal Report, the Contractor both: (1) obtains the required ratings on the At-Risk Performance Incentive Fee objectives contained in the Performance Evaluation Plan; and (2) meets or exceeds the Award Term Section of the Performance Evaluation Plan. If the Contractor does not receive the required rating in (1) above, this Award Term clause becomes inoperable for the associated evaluation period.
- (b) The Contractor’s performance in the areas identified in paragraph (a) of this clause will be evaluated by NNSA/NSO as stated in the PEP. The Manager, NNSA Nevada Site Office, will make an Award Term recommendation to the NNSA Fee Determining Official (FDO) as to whether or not to award additional term. The decision whether to award additional term will be made by the FDO in conjunction with the annual performance incentive fee determination.
- (c) The award term decision is a unilateral determination of the FDO.
- (d) If the FDO’s determination is to award additional term, the Contract shall be

modified unilaterally by the Contracting Officer to extend the term of the contract by one year.

- (e) The contract term, including all earned award terms, shall not exceed a total maximum of 10 years.
- (f) If the Contractor fails two times to earn award term, the operation of the Award Term provision of this clause will cease.
- (g) A significant failure, as defined by the Contracting Officer, of the Contractor's management controls (Section I clause entitled "Management Controls") or a performance failure (Section I clause entitled "Conditional Payment of Fee, Profit, and Incentives – Facility Management Contracts") by the Contractor, may result in the forfeiture of up to three years of previously earned award term in addition to other remedies provided for in the contract. Such reduction in contract term, if exercised by the NNSA, does not constitute a termination action pursuant to the Contract's Section I clause entitled "Termination (Cost Reimbursement) as modified by DEAR 970.4905-1(b)."
- (h) The rights and remedies of NNSA specified herein in this Award Term Clause are not exclusive and are in addition to any other rights and remedies provided by law, regulation, or under the contract. This Award Term Clause does not confer any other rights or remedies to the Contractor other than those specified in this Award Term Clause.

H-9 PERFORMANCE BASED MANAGEMENT

- (a) Performance-Based Management System. This Contract is a management and operating contract, which holds the Contractor accountable for performance. This Contract uses clearly defined standards of performance consisting of performance objectives and performance incentives as described in the Contract's Section H entitled "Performance Incentives" and award term incentives as described in Contract's Section H clause entitled "Award Term" with measures and targets for each area on a fiscal year basis and incorporated into the PEP.
- (b) Performance Appraisal Process.
 - (1) Performance Evaluation Plan. A Performance Evaluation Plan shall be developed and finalized by the Contracting Officer, with Contractor input, prior to the scheduled start date of the appraisal period. The PEP shall document the process and associated performance objectives, performance incentives, award term incentives, and associated measures and targets by which the Contractor's performance will be evaluated. The Parties will attempt to reach mutual agreement on performance objectives, performance incentives, award term incentives, and associated measures and targets that reflect expected business, operational, and technical

performance tied to key end products and DOE/NNSA strategic goals and objectives. The Contracting Officer has the unilateral right to make the final decision on all performance objectives and performance incentives (including the associated measures and targets) used to evaluate Contractor performance. The NNSA Administrator has the unilateral right to make the final decision on all award term incentives (including the associated measures and targets) used to evaluate Contractor performance.

Only the Contracting Officer may revise the PEP, consistent with the Contract SOW, during the appraisal period of performance. The Contracting Officer shall notify the Contractor of changes prior to commencement of prospective work at least 30 calendar days prior to the end of the affected appraisal period.

(2) Contractor Self-Assessment. An annual self-assessment shall be prepared by the Contractor of its performance against each of the performance objectives and incentives contained in the PEP. The annual self-assessment shall be submitted within five-working days after the end of the appraisal period. The Contracting Officer will identify the structure and medium to be used by the Contractor in delivering its annual self-assessment.

(c) Schedule for Performance Incentive Fee Earned Determination.

The Contracting Officer will issue the FDO's final total performance incentive fee amount earned determination in accordance with the schedule set forth in the PEP or as otherwise set forth in this Contract. However, a determination must be made within 60 calendar days after the receipt by the Contracting Officer of the Contractor's self-assessment report or a longer period if the Contractor and Contracting Officer agree. 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.

H-10 PERFORMANCE INCENTIVES

(a) Performance Incentive Fee Determination.

- (1) NNSA/NSO will, at the conclusion of each specified appraisal period, evaluate the Contractor's performance for all Performance Incentive requirements identified for that appraisal period.
- (2) The Performance Incentive fee determination will be made in accordance with the PEP. The determination as to the amount of Performance Incentive fee earned is a unilateral determination made by the FDO.
- (3) The Contracting Officer will notify the Contractor in writing of the Performance Incentive fee determination and the basis of the Performance Incentive fee determination.

- (4) Performance Incentive fee not earned during the evaluation period shall not be allocated to future evaluation periods.
- (b) Fee.
- (1) The maximum fees allocated for payments to the Contractor for the performance of the work under this Contract are set forth in Part I, Section B, of the Schedule. Maximum potential available fee on DOE work assigned under this Contract shall not exceed 7 percent of the total budget listed in the “Laboratory Table” section of the annual DOE budget request for the site Contractor, reduced by the budget for contracts that are not part of the site M&O Contract, and adjusted to ensure that fee is not paid on the available fee pool.
- (2) The actual available fee for DOE work will be within a range 50 percent to 100 percent of the maximum potential available fee and will be established by NA-1 as the FDO based on the importance to NNSA of the desired outcomes for which incentives are provided in the PEP and the difficulty involved in achieving those outcomes and earning the fee.
- (3) Fee on work for non-DOE customers, i.e., Work for Others, will be a fixed fee of 85 percent of the calculated fee percentage for DOE work in (2) above.
- (c) Special Considerations. Fee Limitations
- If objective performance incentives are of unusual difficulty or if successful completion of the performance incentives would provide extraordinary value to NNSA, fees in excess of those allowed under 48 CFR 970.1504-1-3 DEVIATION may be permitted with the approval of the Senior Procurement Executive. In no case can the total available fees exceed the statutory limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b).

H-11 ENVIRONMENTAL, SAFETY, AND HEALTH COMPLIANCE DATA

Data required ensuring environmental, safety, and health compliance by the Contractor in its activities on behalf of NNSA shall not be considered proprietary data in the context of Section I Clause entitled “Rights in Technical Data-Technology Transfer.” NNSA retains unlimited rights in all records, data, and audits involving compliance with applicable Federal, state and local environmental, safety, and health laws and regulations.

H-12 APPLICATION OF DOE/NNSA DIRECTIVES

- (a) Proposal of Alternative. The Contractor may, at any time during performance of this Contract, propose an alternative procedure, standard, system of oversight, or assessment mechanism (collectively referred to herein as “alternative”) to the requirements in a Directive by submitting to the Contracting Officer a signed proposal describing (1) the nature and scope of the alternative; (2) the anticipated benefits, including any cost benefits; (3) a schedule for implementation of the alternative; and (4) a statement that the revised alternative is an adequate and efficient means to meet the Directive. Upon request, the Contractor shall promptly provide the Contracting Officer any additional information that will aid in evaluating the Contractor’s proposal.
- (b) Action of the Contracting Officer. Within sixty (60) days after receipt of the Contractor’s proposal, the Contracting Officer will–
- (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)

Until such time as the Contracting Officer approves the proposed alternative resulting from the process described herein, the Contractor shall adhere to the Directive’s requirements.

- (c) Implementation and Evaluation of Performance. Upon approval in accordance with (b)(2) or (b)(3) above, the Contractor shall implement the alternative. In the case of a conditional approval under (b)(2) above, the Contractor shall provide the Contracting Officer with an assurance statement that the revised alternative is an adequate and efficient means to meet the Directive. Additionally, the assurance statement shall describe any changes to the schedule for implementation. The Contractor shall then implement the revised alternative. NNSA/NSO will evaluate Contractor performance against the approved alternative from the Contractor’s scheduled implementation date.

- (d) Deficiency and Remedial Action. If, during performance of this Contract, the Contracting Officer determines that an alternative adopted through the operation of this clause is not satisfactory, the Contracting Officer may 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 Directive.
- (e) Laws and Regulations Excepted. The process described in this clause shall not affect the application of otherwise applicable laws and regulations of the United States, including DOE regulations.
- (f) Directive System Deviation Process. This clause does not preclude the use of deviation processes provided for in the DOE/NNSA directives system.

H-13 SECURITY

In addition to the requirements of the Contract's Section I clause entitled "Security (JUN 2009) (DEVIATION) ," the Contractor shall comply with additional security regulations of other Government agencies, when applicable, as authorized by the Contracting Officer.

H-14 ENTERPRISE PURCHASING

- (a) Enterprise purchasing involves the NNSA complex-wide assessment of commodity and service requirements and formulation of enterprise-wide contract mechanisms used by members of the enterprise to acquire those commodities and services.
- (b) The Contractor shall cooperate with NNSA and other NNSA contractors in identifying requirements under this Contract that are suitable for enterprise purchasing and shall facilitate the identification of work to be directly acquired by NNSA to support the objectives discussed below. The Contractor shall use the contracting mechanisms identified by NNSA as enterprise purchases and those awarded by the Integrated Contractor Purchasing Team to meet all suitable requirements under this Contract unless the cost of using such contracting mechanisms is shown to be excessive, does not provide the best value, or impacts the Contractor's schedule. The Contractor may propose alternative acquisition strategies to the Contracting Officer for approval.

H-15 NNSA DIRECT CONTRACTS

- (a) In accordance with the Contract Section I clause entitled “Changes,” the Contracting Officer may identify any of the work contemplated by Section C, SOW, of this Contract to be performed either by another contractor directly contracted by NNSA or by Government employees. The Contractor agrees to fully cooperate with such other contractors and Government employees, carefully fit its own work to such other work as may be directed by the Contracting Officer, and provide reasonable support as required. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees. For work identified for performance by another contractor directly contracted by the NNSA–
- (1) The Government and the Contractor will confer in advance on the strategy for changing responsibility for the work and will do so with the objective of minimum disruption to the site operations.
 - (2) The Government may designate the Contractor as the Technical Monitor for such contracts that are directly related to the scope of this Contract. The Contractor agrees to perform such monitoring duties as shall be further described in the designation for each such contract. No designation shall include and the Contractor shall not perform any function determined to be inherently governmental.
 - (3) The Technical Monitor shall report to the Contracting Officer, or the Contracting Officer’s Representative, any performance of a designated contract that may not be in compliance with its terms and conditions but is not authorized to take any other action regarding such noncompliance.
 - (4) NNSA will insert a clause in such contracts substantially as follows–
- H-___. TECHNICAL MONITOR*
- The Government may designate the Nevada Test Site Management and Operating Contractor as Technical Monitor for any right, duty or interest in this contract. In that event, the contractor shall fully cooperate with the Nevada Test Site Management and Operating Contractor for all matters under the terms of the designation.*
- (b) Appropriate adjustments may be made to the Contractor’s Subcontracting Plan to recognize the changes to the subcontracting base and goals.

H-16 CONTRACTOR EMPLOYEES

In carrying out the work under this Contract, the Contractor shall be responsible for the employment of all personnel engaged by the Contractor in the work hereunder, and for the training of personnel. Persons employed by the Contractor shall be and remain employees of the Contractor and shall not be deemed employees of NNSA or the Government. Nothing herein shall require the establishment of any employer-employee relationship between the Contractor and consultants or others whose services are utilized by the Contractor for the work hereunder.

H-17 ADVANCE UNDERSTANDINGS REGARDING ADDITIONAL ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS AND OTHER MATTERS

Allowable costs under this Contract shall be determined according to the requirements of Contract's Section I clause entitled, "Payments and Advances," FAR 31 and DEAR 970.31. For purposes of effective contract implementation, certain items of cost are being specifically identified below as allowable or unallowable under this Contract to the extent indicated:

- (a) ITEMS OF ALLOWABLE COSTS:
 - (1) Personnel costs in accordance with Section J, Appendix A, attached to this Contract.
 - (2) 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.

- (b) ITEMS OF UNALLOWABLE COSTS:
 - (1) Premium Pay for wearing radiation-measuring devices for Contractor and all-tier cost-type subcontract employees.
 - (2) 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.
 - (3) Facilities capital cost of money.

H-18 WORKFORCE TRANSITION, CONTRACTOR COMPENSATION, BENEFITS, PENSION, AND LABOR RELATIONS**(a) Workforce Transition**

Clauses in this Section and Section J, Appendix A, are adopted for the exclusive benefit and convenience of the parties hereto; nothing contained therein shall be construed as conferring any right of action or any other right or benefit upon past, present, or future employees of the Contractor, or upon any other third party.

(b) Employee Retention

Subject to the availability of funds, the Contractor shall offer employment to all employees of the predecessor contractor who have successfully completed their probationary period as of the date of contract award, except the predecessor contractor's Key Personnel and other Senior Managers who reported directly to the predecessor contractor's General Manager. Employment offers to the predecessor contractor's Key Personnel and other Senior Managers who reported directly to the predecessor contractor's General Manager are at the discretion of the Contractor. Nothing in this paragraph shall preclude the Contractor from separating employees when in its judgment there is just cause to do so based on the employee's performance or conduct

(c) Labor Relations

- (1) The Contractor shall comply with the National Labor Relations Act, DEAR Subpart 970.2201, and all applicable Federal and State labor laws.
- (2) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of determining the allowability of cost associated with the Contractor's economic bargaining objectives prior to negotiation of any collective bargaining agreement, extension, or revision thereto. As part of the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which could increase costs under this Contract or that could involve other items of special interest to the Government.
- (3) The Contractor shall provide an electronic copy of the bargaining agreement to the Contracting Officer 30 days after formal ratification. The Contractor shall provide the "Report of Settlement" 30 days after formal ratification using the Work Force Information System (WFIS).
- (4) The Contractor shall notify the Contracting Officer in a timely fashion of

all labor relations issues that may cause a significant impact to the workforce.

- (5) The Contractor shall immediately advise the Contracting Officer of the following:
- (i) Possible strike situations or other actions affecting the continuity of operations including work stoppages and picketing;
 - (ii) Formal action by the National Labor Relations Board (NLRB) including but not limited to issuance of a complaint against the Contractor. Copies of complaints, settlement agreements, judgments and any other documents issued in connection with Contractor actions with respect to labor practices shall be provided to the Contracting Officer;
 - (iii) Recourse to procedures under the Labor-Management Relations Act of 1947 as amended or any other state law;
 - (iv) Any grievance scheduled for arbitration under any collective bargaining agreement that has the potential for significant economic or other impact as well as the decision of the arbitrator; and
 - (v) Other significant issues that may involve review by other federal or state agencies.
- (6) Open Competition and Labor Relations Under Management and Operating and Other Major Facilities Contracts "Labor organization," as used in this clause, shall have the same meaning it has in 42 U.S.C. 2000e(d).
- (i) Unless acting in the capacity of a constructor on a particular project, the Contractor shall not—
 - (A) Require bidders, Offerors, Contractors, or subcontractors to enter into or adhere to nor prohibit those parties from entering into or adhering to agreements with one or more labor organizations, i.e., project labor agreements that apply to construction project(s) relating to this Contract or
 - (B) Otherwise discriminate against bidders, Offerors, Contractors, or subcontractors for refusing to become or to remain signatories or to otherwise adhere to project labor agreements for construction project(s) relating to this Contract.

- (ii) When the Contractor is acting in the capacity of a constructor, i.e., performing a substantial portion of the construction with its own forces, it may use its discretion to require bidders, Offerors, Contractors, or subcontractors to enter into a project labor agreement that the Contractor has negotiated for that individual project.
- (iii) Nothing in this clause shall limit the right of bidders, Offerors, Contractors, or subcontractors to voluntarily enter into project labor agreements.

(7) Labor Standards-Davis Bacon Act

- (i) The Contractor shall, with approval of the Contracting Officer, develop a procedure whereby NNSA will determine if the Davis Bacon Act is applicable to particular subcontracts. The Contractor shall conduct payroll and job-site audits and conduct investigations of complaints as authorized by NNSA 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 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.
- (ii) 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 NNSA 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 Semiannual Enforcement Report to NNSA/NSO by April 21 and October 21 each year.

(8) Work Allocation

- (i) The Contractor shall foster positive labor relations and manage work allocation to perform work expeditiously and efficiently by trained employees. Occasionally, work must be

performed that does not clearly fall within the jurisdiction of any single labor or collective bargaining agreement to which the Contractor is a party (such work is hereinafter referred to as "Unassigned Work").

- (ii) The Contractor shall establish a process to allocate Unassigned Work that is acceptable to the affected unions and consistent with the requirements of applicable law and the terms of this Contract.

(d) Total Compensation System

The Contractor shall provide a total compensation package for all employees transferring from the predecessor contractor to this Contract with respect to salaries, health/welfare benefits, and pensions comparable to that provided by the predecessor contractor as of the date the Contractor assumes responsibility for management and operation of this Contract. The Contractor shall maintain the base salaries of the transferring workforce. Comparability shall be determined by the Contracting Officer in his/her sole discretion.

For all employees transferring from the predecessor contractor to this Contract up to the first six (6) months after the Contractor assumes responsibility for management and operation of this Contract, the Contractor shall carry over the length-of-service credit and leave balances accrued as of the date of hire by the Contractor.

The Contractor shall provide an integrated, market based pay and benefit program. The objective is to provide a level of total compensation which, within available funds, attracts, motivates and retains a highly competent workforce and maintains a competitive position in the applicable labor markets.

- (1) The Contractor's total compensation system shall include the following components:
 - (i) Philosophy and strategy for all pay delivery programs.
 - (ii) System for establishing a job worth hierarchy.
 - (iii) Method for relating internal job worth hierarchy to external market.
 - (iv) System that includes a documented method and process for evaluating individual job performance and that bases individual

and/or group compensation decisions on individual performance and Contractor performance as appropriate. In addition, the system must show the link to the annual evaluation of Contractor performance for individual compensation actions as appropriate.

- (v) Method for planning and monitoring the expenditure of funds.
- (vi) System for internal controls and self-assessment.
- (vii) System to ensure that reimbursement of compensation, including stipends, for employees who are on joint appointments with a parent or other organization shall be pro-rated according to the amount of time the employee spent performing work under this Contract.

(2) Cash Compensation

The Contractor shall submit the following 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) An Annual Compensation Increase Plan (CIP). The CIP shall be provided to the Contracting Officer on October 1 annually and shall include the following components and data:
 - (A) Comparison of average pay to market average pay;
 - (B) Information regarding surveys used for comparison;
 - (C) Aging factors used for escalating survey data and supporting information;
 - (D) Projection of escalation in the market and supporting information;
 - (E) Information to support proposed structure adjustments, if any;
 - (F) Analysis to support special adjustments;
 - (G) Funding requests and supporting analysis for each pay structure to include breakouts of merit, promotions, variable pay, special adjustments, and structure movement;

- (a) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous plan year.
 - (b) 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.
 - (c) Specific payroll groups (e.g., exempt, nonexempt, key personnel) for which CIP amounts are intended shall be defined by mutual agreement between the Contractor and the Contracting Officer.
 - (d) The Contracting Officer may unilaterally 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).
 - (e) The Contractor is authorized to make minor shifts (up to 10%) in funds between payroll groups without prior Contracting Officer approval. The Contractor shall notify the Contracting Officer at the time funds are shifted.
- (H) A discussion of the impact of budget and business constraints on the CIP amount; and
- (I) Discussion of relevant factors other than market average pay (e.g., turnover and offer-to-acceptance statistics, collective bargaining provisions, geographic considerations, total compensation).

CIP APPROVAL:

NOT REQUIRED: Contracting Officer approval is not required for the CIP under the following circumstances: 1) the CIP submission is equal to or less than the salary increase projection (e.g. Work at Work projection); and 2) NNSA does not notify the Contractor of any questions or concerns that may negate cost allowability. NNSA will provide notification within two weeks following the Contractor's submission (date will be identified in the annual NNSA CIP guidance).

REQUIRED: Contracting Officer approval is required for the CIP under the following circumstances: (1) the CIP percent exceeds the professionally recognized salary budget survey's salary increase projection (e.g. Work at Work projection provided in the annual NNSA CIP guidance); (2) the Contractor's position to market warrants less than the survey's salary increase projection such that application of the CIP at the full increase projection would result in the overall position to be above market; and/or (3) the Contractor's overall position to market is above market.

- (iii) The compensation actions for all Key Personnel shall be submitted for approval upon replacement. The top contractor official salary (NSTec President and General Manager) actions including merit pay increases shall be submitted annually to the Contracting Officer for approval. The top contractor official's approved reimbursed base salary will serve as the maximum allowable salary reimbursement under the Contract. With these compensation actions, the Contractor shall provide supporting justification related to internal and external equity, individual performance and the Application for Contractor Compensation Approval Form (DOE 3220.5).
 - (iv) Assignments of employees outside of their normal duty station lasting more than 30 consecutive calendar days for which the NNSA/DOE will reimburse all or some of their compensation or other expenses shall be approved by the Contracting Officer prior to beginning the assignment. Requests shall be submitted 30 days prior to the desired start date. The Contractor shall submit a report of all such assignments, to include the total cost of each assignment, reason for assignment, location, duration, and cost-share arrangement to the Contracting Officer by January 30 of each year unless otherwise specified.
 - (v) The Contractor's Total Compensation System shall meet the tests of allowability in FAR 31.205-6 and DEAR 970.3102-05-6, be fully documented, be consistently applied, and be acceptable to the Contracting Officer. Costs incurred in implementing the Total Compensation System shall be approved by the Contracting Officer. Any changes to the Total Compensation System shall be submitted to the Contracting Officer 60 days prior to implementation. Changes that impact current or future costs shall be approved by the Contracting Officer prior to implementation.
- (3) Reports and Information: Compensation

The Contractor shall provide the Contracting Officer with the

following reports and information with respect to pay and benefits provided under this Contract:

- (i) 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, no later than 30 days after Compensation Increase Plan expenditures.
- (ii) Other compensation reports as requested by the Contracting Officer.

(4) Severance Pay

- (i) Severance pay benefits are not payable to an employee under this Contract if the employee:
 - (A) Voluntarily separates, resigns, or retires from employment
 - (B) Is offered employment with a successor/replacement Contractor
 - (C) Is offered employment with a parent or affiliated company
 - (D) Is discharged for cause
- (ii) Service Credit for purposes of determining severance pay does not include any period of prior service at a DOE/NNSA facility for which severance pay has been previously paid.

(5) Pay In Lieu of Notice

When the Contractor is unable to give advance notice to employees of an impending RIE, employees working 30 hours or more may be paid two weeks pay in lieu of notice at the discretion of the President.

(e) Benefits

(1) Assumption of Existing Pension Plan

The Contractor is required to become a sponsor of the existing pension plans and other Post Retirement Benefit Plans (PRB), as applicable, with responsibility for management and administration of the plans, including

maintaining the qualified status of those plans. The Contractor shall carry over the length of service credit and leave balances for Incumbent Employees accrued as of the date of the Base Term.

- (i) No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans which will result in additional costs. Justification for new benefit plans and changes to plan design or funding methodology which will increase costs must include cost impact, and the basis of determining cost. The Contractor shall notify the Contracting Officer prior to implementation of benefit plans that are either new or first time for the site, are a significant impact to employees; or which may set a precedent for the DOE/NNSA contractor system.
- (ii) Cost reimbursement for pension and other benefit programs sponsored by the Contractor will be based on Contracting Officer approval of Contractor actions pursuant to the "Employee Benefits Value Study" and an Employee Benefits Cost survey Comparison as described in (v) (A) and (v) (B) below.
- (iii) The Contractor shall notify the Contracting Officer prior to terminating any benefit plan during the term of the Contract.
- (iv) Effective January 1, 2013, Service Credit for cost reimbursement for employee benefits to include PRB eligibility will be determined in accordance with NNSA Supplemental Directive NA SD O 350.1, M&O Contractor Service Credit Recognition.
- (v) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall participate in and/or submit the studies required in paragraphs (v) (A) and (v) (B) below. The studies shall be used by the Contractor in calculating the cost of benefits under existing benefit plans. In addition, the Contractor shall submit updated values to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan that will increase costs.
 - (A) The NNSA Consolidated Employee Benefits Value Study for non-bargaining unit employees, must be completed every two years or as directed by the Contracting Officer. The Contractor will utilize the comparator companies previously utilized in the last NNSA Consolidated Benefit Value Study. If any of the comparator companies no longer participate, the Contractor will recommend

replacement companies for approval by the Contracting Officer. The Contractor shall include major non-statutory benefit plans offered by the Contractor, including qualified defined benefit (DB) and defined contribution (DC) retirement and capital accumulation plans and death, disability, health, and paid time off welfare benefit programs in the Value Study. To the extent that the value study does not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources.

- (B) An Employee Benefits Cost Survey Comparison for non-bargaining employees, must be completed annually. The cost Survey must utilize a professionally recognized measure approved by the Contracting Officer that analyzes the Contractor's employee benefits cost for employees on a per capita basis per full time equivalent employee and compares it with appropriate comparator data.
- (C) When the weighted average net benefit value for all non-bargaining employees (including different tiers of benefits or groups of employees) exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer no later than 60 days after the Benefit Value Study is conducted.
- (D) When the average total benefit per capita cost exceeds the comparator group by more than five percent, the Contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan within 60 days after the Benefits Cost Survey is conducted, to achieve conformance with the comparator group.
- (E) Within two years of Contracting Officer approval of the Contractor's corrective action plan for non-bargaining employees, the Contractor shall align employee benefit programs with the benefit value and per capita cost range as approved by the Contracting Officer.

(2) Reports and Information: Benefits

The Contractor shall provide to the Contracting Officer:

- (i) Annually, the Report of Contractor Expenditures for Employee Supplemental Compensation (DOE F 3220.8); and
 - (ii) Quarterly, input requested benefits data into DOE's iBenefits pension and benefits management system.
- (3) Pension Plans
- (i) Each Contractor pension plan shall be subjected to a limited-scope audit annually that satisfies the requirements of ERISA section 103, except that every third year the Contractor must conduct a full-scope audit satisfying ERISA section 103. Alternatively, the Contractor may choose to conduct a full-scope audit satisfying ERISA section 103 annually. In all cases, the Contractor must submit the audit results to the Contracting Officer. In years in which a limited scope audit is conducted, the Contractor must provide the Contracting Officer with a copy of the qualified trustee or custodian's certification regarding the investment information that provides the basis for the plan sponsor to satisfy reporting requirements under ERISA section 104.
 - (ii) The Contractor will be reimbursed for pension contributions in the amounts necessary to ensure that the plans are funded to meet the annual minimum required contribution under ERISA, as amended. If a minimum contribution payment is required to avoid benefit restrictions to Plan participants, the Contractor shall notify the Contracting Officer at least sixty (60) days prior to the date the payment is due. Reimbursement above the annual ERISA required minimum contribution will require prior approval of the Contracting Officer. The Contracting Officer will take into consideration all pre-funding balances and funding standard carryover balances when evaluating whether to approve reimbursement above the minimum required contribution. Timing of a Contractor's contributions to a plan must enable a plan's actuary to certify that a plan is adequately funded at the beginning of a plan year.
 - (iii) The Contractor shall obtain the advance written approval of the Contracting Officer for any pension plan changes that are not required by law and which may increase costs or liabilities and shall submit the information at least 60 days prior to effecting proposed changes to the Contracting Officer for approval or disapproval and a determination as to whether the costs to be incurred are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6. In addition, any proposed special programs (including, but not limited to, plan-loan features,

employee contribution refunds, or ancillary benefits) shall be submitted and the Contractor shall provide the Contracting Officer with an analysis of the impact of special programs on the actuarial accrued liabilities of the pension plan, and on relative benefit value, or cost per capita, if applicable.

- (A) The Contractor shall provide the following to the Contracting Officer:
 - (a) A clean copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout;
 - (b) An analysis of the impact of any proposed changes on actuarial accrued liabilities and an analysis of relative benefit value and a cost study index;
 - (c) Except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from legal counsel for purposes of compliance with all legal requirements applicable to private sector DB pension plans;
 - (d) The Summary Plan Description; and
 - (e) Any such additional information as requested by the Contracting Officer.
- (B) When changes to DB and/or DC plans are required by law, the Contractor must provide the Contracting Officer a copy of the current plan document (as conformed to show all prior plan amendments) with the proposed new amendment indicated in redline/strikeout. This document is to be provided with as much time before the effective date of the change as possible, preferably at least 30 days when feasible.
- (iv) When operations at a designated NNSA facility are terminated and no further work is to occur under the prime Contract, the following apply.
 - (A) No further benefits for service shall accrue;
 - (B) The Contractor shall provide a determination statement in

its settlement proposal, defining and identifying all liabilities and assets attributable to the NNSA Contract;

- (C) The Contractor shall base its DB pension liabilities attributable to NNSA Contract work on the market value of annuities or dispose of such liabilities through a competitive purchase of annuities. The Contractor, as pension plan sponsor, must adhere to Department of Labor guidance set forth at 29 CFR 2509.95-1 regarding selection of an annuity provider for the purpose of benefit distributions from a DB pension plan;
 - (D) Assets shall be determined using the “accrual-basis market value” on the date of termination of operations; and
 - (E) NNSA and the Contractor shall establish an effective date for spinoff or plan termination. On the same day as the Contractor notifies the IRS of the spinoff or plan termination, all NNSA assets assigned to a spun-off or terminating plan shall be placed in a high-yield, fixed-income portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets. The portfolio shall be rated no lower than Standard & Poor’s “AA.”
- (v) Terminating Plans.
- (A) NNSA Contractors shall not terminate any pension plan (commingled or site specific) without notifying the Department at least 60 days prior to the scheduled date of plan termination.
 - (B) To the extent possible, the Contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market or through lump sum payouts. The Contractor, as pension plan sponsor, must adhere to Department of Labor guidance set forth at 29 CFR 2509.95-1 regarding selection of an annuity provider for the purpose of benefit distributions from a DB pension plan. The Contractor shall apply the assumptions and termination procedures of the Pension Benefit Guaranty Corporation.
 - (C) Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or reassignment shall accrue interest from the effective date of

termination or reassignment until the date of payment or transfer.

- (D) If ERISA or IRC rules prevent a full transfer of excess NNSA reimbursed assets from the terminated plan, the Contractor shall pay any deficiency directly to NNSA according to a schedule of payments to be negotiated by the parties.
- (E) On the same day as the Contractor notifies the IRS of the plan termination, all NNSA plan assets will be placed in a low-risk liability matching portfolio until full disposition of the terminating plan's liabilities. The portfolio shall be rated no lower than Standard & Poor's "AA."
- (F) NNSA liability to a commingled pension plan shall not exceed that portion which corresponds to participants' service accrued for their work under an NNSA Contract. The NNSA shall have no other liability to the plan, to the plan sponsor, or to the plan participants.
- (G) After all liabilities of the plan are satisfied, the Contractor shall return to NNSA an amount equaling the asset reversion from the plan termination and any earnings which accrue on that amount because of a delay in the payment to NNSA. Such amount and such earnings shall be subject to NNSA audit. To affect the purposes of this paragraph, NNSA and the Contractor may stipulate to a schedule of payments.

(vi) Post Contract Responsibilities for Pension and Other Benefit Plans

- (A) If this Contract expires or terminates and NNSA 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, 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 comingled plan is involved, the Contractor shall:
 - (a) Spin off the NNSA portion of any comingled plan that provides benefits for employees working at the

NNSA facility into a separate plan. The new plan shall provide benefits similar to those provided by the commingled plan and shall carry with it the NNSA assets on an accrual basis market value, including NNSA assets that have accrued in excess of NNSA liabilities.

- (b) Bargain in good faith with NNSA or the successor Contractor to determine the assumptions and methods for establishing the liabilities involved in a spinoff. NNSA and the Contractor(s) shall establish an effective date of spinoff. On the same day as the Contractor notifies the IRS of the spinoff, all NNSA plan assets assigned to a spun-off plan shall be placed in a low-risk liability matching portfolio until the successor trustee is able to assume stewardship of those assets. The portfolio shall be rated no lower than Standard & Poor's "AA."
- (B) If this Contract expires or terminates and NNSA 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 paragraph), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination elsewhere in this Contract, the following actions shall occur regarding the Contractor's obligations regarding the Plans at the time of Contract Completion:
- (a) Subject to paragraph (vi) (B) (b) 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.
 - (b) 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.

- (vii) Reports and Information - Retirement Plans: For each DB and DC pension plan as applicable or portion of a pension plan for which NNSA reimburses costs, the Contractor shall provide the Contracting Officer with the following information within nine months of the last day of the current pension plan year except for the Pension Management Plan which must be submitted by January 30 of each year.
 - (A) The annual actuarial valuation report for each NNSA-reimbursed pension plan. When a pension plan is commingled, the Contractor shall submit separate reports for NNSA's portion and the plan total.
 - (B) Copies of IRS Forms 5500 with Schedules for each NNSA-funded pension plan, no later than that submitted to the IRS.
 - (C) 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.
 - (D) The annual Pension Management Plan as described below ((4) Pension Management Plan) by January 30 of each year.
- (4) Pension Management Plan
 - (i) The Contractor shall submit a plan for management and administration (Pension Management Plan) for each defined benefit pension plan (Plan) for which the Department has a continuing obligation to reimburse pension contributions that is consistent with the terms of this Contract and which includes

projected assets, projected liabilities, and estimated contributions and the prior year's actuarial valuation report annually on January 30.

- (ii) The Pension Management Plan shall include:
 - (A) The Contractor's best projection of the contributions which it will be legally obligated to make to the Plan(s), beginning with the required contributions for the current fiscal year, based on the latest actuarial valuation, and continuing for the following five fiscal years. This estimate will be based upon compliance with all applicable legal requirements relating to the determination of contributions and upon the assumptions set out in the Plan document(s). All contribution calculations should reflect payments made during DOE fiscal years, beginning Oct 1, through September 30, and the next succeeding six fiscal years. Please include a summary of the key actuarial assumptions used to determine the required contribution. All projections must be based upon the most recently available asset information for the Plan. For example, for a Plan with a July 1 valuation date, project the July 1, value of assets for the current year to be used in the calculation from the actual January 1, value of assets from the same year.
 - (B) If the actuarial valuation submitted pursuant to the annual Pension Management Plan update indicates that the sponsor of the Plan must impose benefit restrictions, the Contractor shall provide the following information:
 - (a) The type of benefit restriction that will take place;
 - (b) The number of Contractor employees that potentially could be impacted and the nature of the restriction (e.g., financial impact) by imposition of the required benefit restriction;
 - (c) The amount of money that would need to be contributed to the Plan and the timing of such contribution to avoid legally required benefit restrictions; and
 - (d) A recommendation regarding whether the additional money should be contributed to the Plan and the rationale for the recommendation.

- (C) A detailed discussion of how the Contractor intends to manage the Plan(s) to maximize contribution predictability (i.e. forecasting accuracy) and to contain current and future costs, to include the rationale for selection of all Plan assumptions (i.e., actuarial experience studies) that determine the required contributions and which impact the level and predictability of required contributions. As part of the Contractor's plan to maximize contribution predictability, the Contractor may propose funding strategies other than ERISA minimums for NNSA's consideration and approval. The Contractor shall submit the following for NNSA to consider in deciding on the alternate funding strategy:
- (a) Identify whether the current year additional amount can be absorbed within the current operating budget;
 - (b) Discuss the integration of Plan's funding strategy and investment strategy taking into consideration the plan's demographic profile, liability duration, and impact of current year funding decisions on future year contribution requirements;
 - (c) Discuss the strategy for achieving fully funded status and protecting against erosion of the Plan's funded status;
 - (d) Discuss the strategy for specifically protecting any pension funding contributions reimbursed in excess of the minimum required contribution against the risk of significant loss; and
 - (e) Discuss whether the plan has a prefunding or funding standard carryover balance that could be used to improve the plan's AFTAP without requiring additional contributions. Provide a rationale regarding the recommended use of the available balance(s).
- (D) An assessment to evaluate the effectiveness of the Contractor's Plan(s) investment management/results. The assessment must include at a minimum: a review and analysis of Plan investment objectives and asset allocations; results of the most recent asset liability study and investment policy review; the strategies employed to

achieve the Plan's investment objectives; and the methods used to monitor execution of those strategies and the achievement of the investment objectives. The Contractor shall also identify its plans, if any, for revising any aspect of its Pension Management Plan based on the results of the review.

Within thirty (30) days after the date of the submission, appropriate Contractor representatives will meet with the Contracting Officer and other DOE/NNSA representatives to discuss the Contractor's proposed Pension Management Plan. The Contractor must be prepared to discuss any differences between the prior fiscal year's projected pension contributions for future fiscal years and the most recent projected pension contributions for future fiscal years and the rationale for any such discrepancies. In addition, discrepancies between the actual contributions made for the most recent fiscal year preceding the meeting and the projected contributions for that fiscal year and the rationale for any such discrepancies, and funding strategies for the Plan will be discussed.

(f) Workforce Planning

(1) Workforce Planning - General

The Contractor shall analyze workforce requirements consistent with current and future mission requirements and develop appropriate workforce transition strategies to ensure appropriate skills are available at the right time, in the right number, in the right place. Particular attention shall be paid to current and future critical skills. This analysis shall be available for review upon Contracting Officer request.

(2) Reductions in Contractor Employment – Workforce Restructuring

- (i) Voluntary Separations: In order to minimize the number of involuntary separations and mitigate the impact on affected employees, the Contractor will consider in consultation with the Contracting Officer, the use of a Voluntary Separation Program (VSP) before consideration is given to conducting an Involuntary Separation Program (ISP) when workforce restructuring is necessary. The Contractor shall submit the VSP for approval by the Contracting Officer prior to implementation regardless of the number of employees involved. No reimbursement of costs associated with VSPs will be allowable if not approved by the Contracting Officer prior to implementation.

- (ii) Involuntary Reductions in Contractor Employment
 - (A) If the restructuring involves separating between 10-99 employees in a rolling twelve-month period, the Contractor shall notify the Contracting Officer no later than 15 days in advance of the action.
 - (B) For restructuring actions that involve separating between 50-99 employees, the Contractor shall prepare a specific workforce restructuring plan and submit the plan to the Contracting Officer for informational purposes. In addition, the Contractor shall perform a diversity impact analysis and provide a copy of the analysis to the NNSA Site Counsel for any restructuring actions that involve 50 or more employees within a 12 month period.

If the restructuring may involve the separation of 100 or more employees within a 12-month period, the Contractor shall submit a specific workforce restructuring plan, for approval by the Contracting Officer.
 - (C) All notifications to the NNSA must contain pertinent information such as reasons, costs, dates, and numbers of impacted employees.
 - (D) The contractor may submit multi-year workforce restructuring plans for consideration and approval.
- (iii) Any payment of benefits beyond those already approved in the Contract must be approved by the Administrator, NNSA, through the Contracting Officer.

H-19 WORKERS COMPENSATION

- (a) The Contractor, unless 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 workers' compensation policies and all initial proposals for self-insurance. Additionally, 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 the total benefit payments from all sources shall not exceed 100% of employee's net pay.

H-20 SERVICE CONTRACT ACT OF 1965 (41 U.S.C. 351)

The Service Contract Act of 1965 is not applicable to this Contract. However, in accordance with Section I clause entitled "Contractor Purchasing System (MAY 2006)," subcontracts awarded by the Contractor are subject to the Act to the same extent and under the same conditions as contracts awarded by NNSA. The Contractor and the Contracting Officer shall develop a procedure whereby NNSA 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.

H-21 WALSH HEALY PUBLIC CONTRACTS ACT

Except as otherwise may be approved, in writing, by the Contracting Officer, the Contractor agrees to insert the following provision in noncommercial Purchase Orders and subcontracts under this Contract. "If this Contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh Healy Public Contracts Act, as amended (41 U.S.C. 35), they are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect."

H-22 MODIFICATION AUTHORITY

Notwithstanding any of the other provisions of this Contract, a Contracting Officer shall be the only individual on behalf of the NNSA to—

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

In addition, the Contracting Officer shall have the authority to decrease or increase the SOW under this Contract in accordance with Section I clause entitled, "Changes."

H-23 PRIVACY ACT SYSTEMS OF RECORDS

The Contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function pursuant to the Contract's Section I clause entitled "Privacy Act."

<u>DOE System No.</u>	<u>Title</u>
DOE-33	Personnel Medical Records
DOE-35	Personnel Radiation Exposure Records
DOE-38	Occupational and Industrial Accident Records
DOE-80	Quality Assurance Training and Qualification Records (as it relates to the Office of Repository Development)
DOE-81	CI Administrative and Analytical Reports
DOE-84	CI Investigative Records

The above list may be revised from time to time by the Contracting Officer as necessary to keep it current. Such changes need not be formally incorporated before the annual Contract update modification, but shall have the same effect as if actually listed above for the purpose of satisfying the listing requirement contained in paragraph (a)(1) of the Contract's Section I clause entitled "Privacy Act."

H-24 FLOWDOWN OF RIGHTS TO PROPOSAL DATA

The Contractor shall include the Section I clause entitled "Rights to Proposal Data (Technical)" in any subcontract awarded, based on consideration of a technical proposal.

H-25 CONTINUATION OF PREDECESSOR CONTRACTOR'S OBLIGATIONS

On July 1, 2006, the Contractor shall assume responsibility and will continue to perform any existing agreements and regulatory obligations entered into under Contract No. DE-AC08-96NV11718 by the predecessor contractor. These agreements and regulatory obligations include all (a) subcontracts and purchase orders; (b) agreements with domestic and foreign research organizations; (c) agreements with universities and colleges; (d) agreements with Federal, Tribal, and state regulatory agencies; (e) operating and environmental permits (including site-specific operating permits) and licenses; and (f) any other agreements in effect prior to July 1, 2006.

H-26 PERFORMANCE GUARANTEE

In the event any of the signatories to the Performance Guarantee Agreement enters into bankruptcy proceedings, whether voluntary or involuntary, the Contractor agrees to furnish, within five days of filing, written notification of the bankruptcy filing to the Contracting Officer.

H-27 SEPARATE CORPORATE ENTITY

The work performed under this Contract by the Contractor shall be conducted by a corporate entity separate from its parent company(ies). The separate corporate entity must be set up solely to perform this Contract and shall be totally responsible for all Contract activities.

H-28 CONTRACTOR COMMITMENTS

The Contractor agrees to use its best efforts to perform, or have performed, in the case of those of the Contractor's parent organization, those commitments set forth in Part III, Section J, Appendix D, entitled "Corporate Parent Promises and Commitments." All costs (direct or indirect) to be incurred by the Contractor or any other organizations in providing the Contractor's commitments are expressly unallowable and nonreimbursable under this Contract.

H-29 PERFORMANCE OF WORK AT DOE FACILITIES AND SITES OTHER THAN THE NEVADA TEST SITE AND SATELLITE FACILITIES

In performance of the Contract's work at DOE or NNSA facilities and sites other than the NTS and satellite facilities, the Contractor shall comply with requirements set forth in this Contract's Section J, Appendix C, entitled "List of Applicable Laws, Regulations, and DOE Directives" and any additional directives that have been established for the DOE/NNSA Prime Contractor at that DOE/NNSA facility/site that are applicable to the Contractor's work being performed at those locations.

H-30 ADDITIONAL TECHNICAL DATA REQUIREMENTS

Except as otherwise authorized by the Contracting Officer, the Contractor, pursuant to 48 CFR 27.409(h), shall include the clause at 48 CFR 52.227-16 in any subcontract for research, development, or demonstration to enable the ordering of technical data as actual need and requirements therefore become known during the course of the subcontract.

H-31 CONTRACTOR USE OF GOVERNMENT VEHICLES – WORK TO DOMICILE

- (a) Government-owned or leased vehicles shall be used for official purposes only. Official purposes do not ordinarily include transportation of a contractor's employee between domicile and place of employment. However, contractor employees driving government-owned or leased vehicles to their personal residences will be considered to do so for official purposes if all the following conditions exist–
 - (1) Unusual and special circumstances occur when contractor employees are required to work unusual hours and regular transportation is not available.
 - (2) The Contractor has defined, in writing, the special and unusual circumstances in which the driving of government-owned or leased vehicles by contractor employees to their personal residences will be considered used for official

purposes and the Contracting Officer has approved them.

- (3) The Contractor has designated, in writing, specific individuals who are authorized to approve the driving of government vehicles by contractor employees to their personal residences.
- (b) The Contractor shall maintain records necessary to clearly establish the extent that home-to-work transportation was for official purposes. The Contractor shall determine, subject to approval of the Contracting Officer, the organizational level at which the records should be maintained and kept. The records shall be available for audit and shall contain information required by the Contracting Officer.
- (c) The Contractor shall establish and enforce penalties for employees who use or authorize the use of Government vehicles for other than official purposes.

H-32 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATIONS OR ALLEGED VIOLATIONS, FINES, AND PENALTIES

- (a) The Contractor shall accept, in its own name, notices of violations or alleged violations (NOVs/NOAVs) and fines and penalties issued by Federal or State regulators resulting from the Contractor's performance or work under this Contract. The Contractor shall notify the Contracting Officer promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties. The allowability of the costs associated with fines and penalties shall be subject to other provisions of this Contract.
- (b) The Contractor shall not make any commitments or offers to regulators that would bind the Government in any form or fashion, including monetary obligations, without receiving written concurrence from the Contracting Officer or his authorized representative prior to making any such offers/commitments. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.

H-33 CONTROL OF NUCLEAR MATERIALS

- (a) The Contractor, in coordination with the Nuclear Weapons Laboratories, shall implement and maintain material control and accountability procedures, maintain current records, and institute appropriate control measures for Nuclear Materials in its possession commensurate with national security and DOE/NNSA policy. Nuclear Materials are defined in DOE/NNSA's Orders and Directives. The Contractor shall make such reports and permit such inspections as NNSA may require with reference to nuclear materials. The Contractor shall protect such materials against theft and misappropriations and prevent loss of such materials.

Transfer of Nuclear Materials shall only be made with the prior written approval of the

Contracting Officer or authorized designee. Nuclear Materials in the Contractor's possession, custody, or control shall be used only for furtherance of the work under this Contract.

- (b) The Contractor shall make a part of each purchase order, subcontract, or other commitment involving the use of Nuclear Materials that it enters into under this Contract appropriate terms and conditions for the use of Nuclear Materials and the responsibilities of the subcontractor or vendor regarding control of Nuclear Materials. In the case of fixed-price purchase orders, subcontracts, or other commitments involving the use of Nuclear Materials for which the Contractor has accountability, the terms and conditions with respect to Nuclear Materials shall also include the financial responsibilities, if any, regarding such items as losses, scrap recovery, product recovery, and disposal.

H-34 AGREEMENTS TO PERFORM NON-DOE ACTIVITIES

- (a) Subject to the prior written approval of the Contracting Officer and in compliance with applicable requirements imposed by the Contracting Officer pursuant to Section I, DEAR 970.5204-2, "Laws Regulations and DOE Directives," the Contractor may perform non-DOE activities which are consistent with and complementary to NNSA's mission involving the use of contract equipment, facilities, or personnel. Such proposed work may be for non-Federal entities or other Federal agencies. The request for such approval shall set forth in detail the nature of the outside work to be performed, the equipment, facilities or personnel required, and the financial and contractual arrangements proposed to pay for the cost of such work. The Contracting Officer shall consider such a request, being guided, among other factors, by the current or future needs of NNSA's programs for the equipment, facilities, or personnel to be utilized in the performance of such outside work. Primary considerations in approving such work are that the proposed work will not place the Contractor in direct competition with domestic non-Federal entities, will not adversely impact execution of the Contractor's assigned programs, and will not create a potentially detrimental future burden on commitment of NNSA resources. If the Contracting Officer approves such a request, the Contractor and NNSA shall agree upon the terms and conditions which would apply to such work. This agreement may provide for receipt by the Government of all or part of such sum as represents the payment to be received by the Contractor for such outside work provided, however, that NNSA may contribute the use of certain equipment, facilities, or personnel to the Contractor for the performance of such outside work if it determines that it desires to foster the activity in some measure. Except as otherwise approved, in writing, by the Contracting Officer, all Articles of this Contract shall be deemed to be applicable to the performance of such work. This clause shall not be construed as amending or superseding the requirements of Section C, SOW.
- (b) The Contractor shall promptly advise the Contracting Officer of any advance notices of, or solicitations for, a major system acquisition requirement received from other Federal agencies pursuant to FAR Section 34.005 which would logically

involve DOE facilities or resources operated or managed by the Contractor. The Contractor shall not respond to or otherwise propose to participate in the response to the requirements of such solicitation unless the Contractor has obtained written approval of the Contracting Officer.

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

H-35 LIAISON SUPPORT WITH OTHER GOVERNMENT AGENCIES

The Contractor shall support NNSA/NSO in interfacing with various Government agencies such as the Defense Nuclear Facilities Safety Board, the Air Force, and state regulatory agencies to implement appropriate environmental, safety, and health requirements at the NTS.

H-36 THIRD PARTIES

Nothing contained in this Contract or its modifications shall be construed to grant, vest, or create any rights in any person not a party to this Contract. This clause is not intended to limit or impair the rights that any person may have under applicable Federal Statutes.

H-37 NNSA ON-SITE CLEANUP

The Contracting Officer may de-scope onsite cleanup from this Contract and transfer the scope to an NNSA Cleanup Contractor. "Cleanup" is defined herein as environmental restoration, legacy waste disposition, decontamination, and decommissioning.

H-38 LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2010) (NOV 2009)

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.

H-39 GREEN PURCHASING UNDER DOE SERVICE CONTRACTS (JUN 2009)

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

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

(b) To the extent that the services provided by the Contractor require the provision of

any of the above types of products, the environmentally preferable type of product is to be furnished unless that type of product is not available competitively within a reasonable time, at a reasonable price, is not life cycle cost efficient in the case of energy consuming products, or does not meet reasonable performance standards. The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming Products, and 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts, in Section I require the use of products that have biobased content, are energy efficient, or have recycled content.

H-40 GREEN PURCHASING UNDER CONTRACTS FOR PERSONAL COMPUTERS (DESKTOPS, LAPTOPS AND MONITORS) (JUN 2009)

Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, the Department of Energy is committed to managing its facilities in a manner that will promote the natural environment and protect the health and well being of its Federal employees and Contractor service providers. Any personal computer equipment (i.e., desktops, laptops, or monitors) delivered hereunder shall be energy efficient such that it compliant with EnergyStar or FEMP standards as set forth at 48 CFR 52.223-15. Likewise, when supplying personal computer equipment hereunder, the Contractor shall ensure that the equipment is rated at least bronze pursuant to IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products as set forth at 48 CFR 52.223-16.

H-41 CONFERENCE MANAGEMENT (SEP 2015)

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) For the purpose of this clause, "conferences" is defined in Attachment 2 to the Deputy Secretary's memorandum of August 17, 2015 entitled "Updated Guidance on Conference-Related Activities and Spending." A copy of the memorandum may be found at <http://energy.gov/sites/prod/files/2015/08/f26/EXEC-2015-002952%20Memo%20signed%20bv%20Dep%20Sec%20Sherwood-RandaH%208-17-15.pdf>.
- c) Contractor-sponsored conferences include those events that meet the conference definition and either or both of the following:
 - 1) The contractor provides funding to plan, promote, or implement an event, except in instances where a contractor:

- i) covers participation costs in a conference for specified individuals (e.g. students, retirees, speakers, etc.) in a total amount not to exceed \$10,000 (by individual contractor for a specific conference) or
 - ii) purchases goods or services from the conference planners (e.g., attendee registration fees, renting booth space).
- 2) The contractor authorizes use of its official seal, or other seals/logos/ trademarks to promote a conference. Exceptions include non-M&O contractors who use their seal to promote a conference that is unrelated to their DOE contract(s) (e.g., if a DOE IT contractor were to host a general conference on cyber security).
- d) Attending a conference, giving a speech or serving as an honorary chairperson does not connote sponsorship.
- e) The contractor will provide information on conferences they plan to sponsor with expected costs exceeding \$100,000 in the Department's Conference Management Tool, including:
 - 1) Conference title, description, and date
 - 2) Location and venue
 - 3) Description of any unusual expenses (e.g., promotional items)
 - 4) Description of contracting procedures used (e.g., competition for space/support)
 - 5) Costs for space, food/beverages, audio visual, travel/per diem, registration costs, recovered costs (e.g., through exhibit fees)
 - 6) Number of attendees
- f) The contractor will not expend funds on the proposed contractor-sponsored conferences with expenditures estimated to exceed \$100,000 until notified of approval by the contracting officer.
- g) For DOE-sponsored conferences, the contractor will not expend funds on the proposed conference until notified by the contracting officer.
 - 1) DOE-sponsored conferences include events that meet the definition of a conference and where the Department provides funding to plan, promote, or implement the conference and/or authorizes use of the official DOE seal, or other seals/logos/ trademarks to promote a conference. Exceptions include instances where DOE:
 - i) covers participation costs in a conference for specified individuals (e.g. students, retirees, speakers, etc.) in a total amount not to exceed \$10,000 (by individual contractor for a specific conference) or
 - ii) purchases goods or services from the conference planners (e.g., attendee registration fees; renting booth space); or provide funding to the conference planners through Federal grants.

- 2) Attending a conference, giving a speech, or serving as an honorary chairperson does not connote sponsorship.
 - 3) The contractor will provide cost and attendance information on their participation in all DOE-sponsored conference in the DOE Conference Management Tool.
- h) For *non-contractor sponsored conferences*, the contractor shall develop and implement a process to ensure costs related to conferences are allowable, allocable, reasonable, and further the mission of DOE/NNSA. This process must at a minimum:
- 1) Track all conference expenses.
 - 2) Require the 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 a contractor does so, its expenditures for the conference may be deemed unallowable.

(End of clause)

H-42 COMPLIANCE WITH INTERNET PROTOCOL VERSION 6 (IPV6) IN ACQUIRING INFORMATION TECHNOLOGY (JULY 2011)

This contract involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology. The Contractor agrees that (1) all deliverables that involve IT that uses IP (products, services, software, etc.) comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products; and (2) it has IPv6 technical support for fielded product management, development and implementation available. If the Contractor plans to offer a deliverable that involves IT that is not initially compliant, the Contractor shall (1) obtain the Contracting Officer's approval before starting work on the deliverable; and (2) have IPv6 technical support for fielded product management, development and implementation available. Should the Contractor find that the Statement of Work of this contract does not conform to IPv6 standards, it must notify the Contracting Officer of such nonconformance and act in accordance with the instructions of the Contracting Officer.

(End of Clause)

(END OF MODIFICATION)

H-43 MANAGEMENT AND OPERATING CONTRACTOR (M&O) SUBCONTRACT REPORTING (SEP 2015)

(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.

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

“Transaction” means any awarded contract, agreement, order, or modification, etc. (other than one involving an employer-employee relationship) entered into by a DOE M&O prime contractor calling for supplies and services (including construction) required solely for performance of the prime contract.

(b) *Limited Interim Reporting.*

(1) The Contractor shall report no less than the twenty highest dollar value first-tier small business subcontract transactions under the contract by December 1 for the previous fiscal year until the Contractor business systems can report the required data as set forth in paragraph (c) below. Classified subcontracts shall be excluded from the reporting requirement and shall not be counted towards the total number of transactions of the reporting requirement.

(2) Transactions with a corporation, company, or subdivision that is an affiliate of the Contractor are not included in these reports.

(3) The Contractor shall provide the data on first-tier small business subcontract transactions under the contracts, as described in the *MOSRC Guide* via the Microsoft Excel spreadsheet co-located at <https://max.gov> in the MOSRC Collaboration Center. The spreadsheet will be submitted to HQProcurementSystems@hq.doe.gov.

(c) *Full Reporting.* The Contractor shall update their business systems and processes to collect and report data to MOSRC in compliance with the MOSRC Guide. The Contractor shall report data in MOSRC for FY17 (and each year thereafter) first-tier small business subcontracting transactions under the contract. Classified subcontracts shall be excluded from the reporting requirements. All Contractor systems shall be updated in order to provide the first FY17 report in November 2016 for October 2016 transactions.

[End of Clause]

Modification 097

The purpose of this modification is to incorporate American Recovery and Reinvestment Act Work Authorization RA-09-001 Revision 08 into the contract.

Modification 094

Modification 094 is to transmit Work Authorization (WA) RA-10-002 . The WA is being issued to authorize ARRA funding to be used to provide support to the Las Vegas Satellite Office on an as-needed basis in support of the Energy Efficiency Conservation Block Grant Program. Funding in the amount of \$60,000 is being provided to cover support from 10/01/2010 through 9/30/2011.

H-9999 WORK FUNDED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MARCH 2009)

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). The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. The Recovery 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.

To comply with the reporting requirements of Section 1512(c) of the Recovery Act and related Guidance, the Contractor shall segregate all costs associated with Recovery Act actions assigned and authorized under this Contract from those costs associated with all other work authorized under the terms of this Contract.

The Recovery Act funds can be used in conjunction with other funding as necessary to complete projects. However, the Contractor must ensure that the project contains the authorized Treasury Accounting Symbol (TAS) approved by the Contracting Officer to ensure linkage between procurement and financial data. The Contractor should issue separate contracts (if subcontracted) for the Recovery Act project tasks to ensure compliance with the tracking and reporting requirements of the Recovery Act and related Guidance. For projects funded by sources other than the Recovery Act, the Contractor should record the TAS and project number and assign separate task codes to ensure that the financial information is not co-mingled and to ensure the records allow a clear and auditable linkage between the projects, procurement and financial data, as prescribed in the Recovery Act.

The Government will develop 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 shall comply with all applicable requirements of the Recovery Act including those Recovery Act requirements contained in a Work Authorization to be issued to the Contractor. If the Contractor believes there is any inconsistency between the Recovery Act requirements contained in the Work Authorization and the Contract terms and conditions, the Contractor shall seek guidance from the Contracting Officer. The Contractor shall also advise the Contracting Officer if there are any Contract deliverables or Contract requirements that may need to be updated in order to comply with the Recovery Act.

Work Authorization RA-10-002, Rev 02 (attached)
Work Authorization RA-10-001, Rev 05 (attached)
Work Authorization RA-09-001, Rev 08 (attached)

**WORK AUTHORIZATION
U.S. DEPARTMENT OF ENERGY CONTRACT WORK AUTHORIZATION**

1a. Project Title: Las Vegas Satellite Office Energy Efficiency Conservation Block Grant Program		1b. Work Proposal Number (if applicable): N/A
2. Headquarters Program Point of Contact. Name: Bradley J. Poston Organization Code: MA-64 Telephone No.: 202-287-1389		
3. Headquarters Budget Point of Contact. Name: Marilyn Dillon Organization Code: MA-1.1 Telephone No.: 202-586-4919		
4. Responsible Program: Office of Management (MA)		5. Responsible Secretarial Officer: Ingrid Kolb MA-1
6. Responsible Field Organization: NNSA Nevada Site Office		
7a. Site and Facility Management Contractor: National Security Technologies, LLC		7b. Contractor Point of Contact. Name: A. C. Hollins, Jr. Telephone No.: 702-295-6657
8. Work Authorization Number: RA-10-002		9. Revision Number: 02
10. Funds Authorized. *See Page 4, Paragraph E., Funds Authorized. Budget and Reporting Code: C002079 Previous: \$ 79,642.49 Change: +\$ 1,000.00 Current: \$ 80,642.49		
11. Performance Period Covered by Funds. From: Oct 1, 2010 To: Sep 30, 2012	12. Work Start Date: October 1, 2010	13. Expected Completion Date: September 30, 2012
14. Statement of Work: See American Recovery and Reinvestment Act Requirements (Attachment 1) for a description of the Statement of Work, milestones, deliverables, performance measures/expectations and other requirements mandated by the American Recovery and Reinvestment Act.		
15. Reporting Requirements (Status reports, scientific and technical information or similar): See Attachment 1		
16. Work Authorization Program Official. Name (typed): Stephen A. Mellington Signature: <i>Stephen A. Mellington</i> Date: 6/11/12		
17. DOE Field Organization Official. Name (typed): Kathleen M. Lynn Signature: <i>Kathleen M. Lynn</i> Date: 6/11/12		
18. Contractor's Authorized Representative. Name (typed): John Stumpf Signature: <i>John Stumpf</i> Date: 6/6/12		
19. DOE Contracting Officer (or delegated representative). Name (typed): Darby A. Dieterich Signature: <i>Darby A. Dieterich</i> Date: 6/12/12		
*See paragraph E of the American Recovery and Reinvestment Act Requirements (Attachment 1) for total funds authorized.		

Atch 2

American Recovery and Reinvestment Act Requirements (Attachment 1)

- A. The specific Statement of Work funded by this Work Authorization pursuant to contract **DE-AC52-06NA25946** clause B-9999, clause H-9999 and to the American Recovery and Reinvestment Act, Pub. L. 111-5, (Recovery Act) is as follows:

Recovery Act Project Statement of Work
<p>Fiscal Year 2011 – October 1, 2010 through September 30, 2011</p> <p>Provide the following services on an as-needed basis to the Las Vegas Satellite Office Energy Efficiency Conservation Block Grant Program. These efforts support 25 people located in the Nevada Support Facility.</p> <ul style="list-style-type: none">▪ Medical Services;▪ Project Controls Engineer▪ Vehicles;▪ Reproduction Support; and▪ Telephones
<p>Fiscal Year 2012 – October 1, 2011 through September 30, 2012</p> <p>Provide the following services on an as-needed basis to the Las Vegas Satellite Office Energy Efficiency Conservation Block Grant Program. These efforts support 15 people located in the Nevada Support Facility.</p> <ul style="list-style-type: none">▪ Medical Services;▪ Project Controls Engineer▪ Vehicles;▪ Reproduction Support; and▪ Telephones
<p>Total overall estimated cost is \$80,642.49.</p>

- B. The specific milestones for this Work Authorization are as follows:

- **Support will be provided on an as-needed basis throughout the period of performance.**

- C. The specific deliverables for this Work Authorization are as follows:

- **Monthly reports**

D. The specific performance measures/expectations must be connected to the Recovery Act work under this Work Authorization. The specific performance measures/expectations for this Work Authorization are as follows: N/A

E. The funds authorized for this Work Authorization are subject to the following:

1. Pursuant to clause B-9999 and the clause in Section I, entitled "Obligation of Funds," total funds in the amount of **\$80,642.49 **** are obligated herein and made available for payment of allowable costs and fee earned related only to the Recovery Act work under Work Authorization *RA-10-002* from **October 1, 2010** through **September 30, 2012****. Associated accounting and appropriation data is:

** The additional funding provided under this revision will likely not be sufficient to cover the entire length of the desired extension (through September 30, 2012). The support defined in this WA will be provided until such time as the ARRA funding is exhausted. Once the ARRA funding is exhausted, this WA will terminate and DOE will be required to provide funding from a different source in order to continue this work scope.

Accounting and Appropriations Data

Level Name	Fund	Appropriation Year	Allottee	Reporting Entity	Object Class	Program	Project	WFO	Amount
Level	1	2	3	4	5	6	7	8	9
Numerical Characters	06500	2009	01	100035	25400	3124701	2007000	000000	\$80,642.49

F. The other requirements mandated by the American Recovery and Reinvestment Act, which is applicable only to the Recovery Act work, are as follows:

1. **Subcontracts:**

The Contractor is informed of the Government's preference, to the maximum extent possible, when issuing subcontracts funded under the Work Authorization for Recovery Act work, the subcontracts should be awarded as fixed priced actions using competitive procedures and documented accordingly in the event fixed priced/competitive procedures are not utilized. To the maximum extent possible, subcontracts funded under this Work Authorization shall be awarded as fixed-price contracts through the use of competitive procedures. A summary of any subcontract awarded with such funds that is not fixed-price and not awarded using competitive procedures shall be posted in a special section of the website www.recovery.gov, maintained by the Accountability and Transparency Board.

2. **Definitions:**

For purposes of this paragraph, "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. 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.

3. Flow Down Provision

The Contractor must include the below requirements in every subcontract over \$25,000 that is funded, in whole or in part, by the Recovery Act unless the subcontract is with an individual.

4. Segregation and Payment of Costs

The 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. The Recovery Act funds can be used in conjunction with other funding as necessary to complete projects. However, the Contractor must ensure that the project contains the authorized Treasury Accounting Symbol (TAS) approved by the Contracting Officer to ensure linkage between procurement and financial data. The Contractor should issue separate contracts (if subcontracted) for the Recovery Act project tasks to ensure compliance with the tracking and reporting requirements of the Recovery Act and related Guidance.

5. Prohibition on Use of Funds

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

6. Wage Rates

All laborers and mechanics employed by the Contractor 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 (U.S.C.). 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>.

7. Publication

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

8. Registration requirements

The Contractor shall ensure that all first-tier subcontractors have a DUNS number and are registered in the Central Contractor Registration (CCR) within 10 days after receipt of subcontract.

9. Utilization of Small Business

The 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.

10. Access

- (i) As required by the Recovery Act, the Comptroller General and his representatives are authorized to examine any records of the Contractor or any of its Subcontractors that involve transactions relating to the contract or subcontract and to interview any officer or employee of the Contractor or any of its subcontractors, regarding such transactions.
- (ii) As required by the Recovery Act, any representative of an appropriate Inspector General is authorized to examine any records of the Contractor or any of its Subcontractors that involves transactions relating to the contract or subcontract and to interview any officer or employee of the Contractor or Subcontractor regarding such transactions.
- (iii) As required by the Recovery Act, the Recovery Accountability and Transparency Board (The Board) and its representatives are authorized to conduct audits and reviews of contracts that use Recovery Act funds. In addition to having access to records of the contractor and any of its subcontractors, and the right to interview any officer or employee of the contractor or subcontractor, the Board is also authorized to issue and enforce subpoenas to compel the testimony at public hearings, or otherwise, of persons who are not Federal officers or employees.

11. Certification

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.

12. **FAR 52.203-15 – Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009. (JUN 2010)** [Revised from the FAR clause dated March 2009.]

- (a) The Contractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act).
- (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.
(End of clause)

13. **FAR 52.204-11 – American Recovery and Reinvestment Act—Reporting Requirements. (JUL 2010)**

[Applicable to all ARRA Work Authorizations from the date this modification is executed. The revised clause requires first-tier subcontractors with Recovery Act funded awards of \$25,000 or more to report jobs information to the prime contractor for reporting into [FederalReporting.gov](http://www.FederalReporting.gov).]

- (a) *Definitions.* For definitions related to this clause (*e.g.*, contract, first-tier subcontract, total compensation, etc.) see the Frequently Asked Questions (FAQs) available at http://www.whitehouse.gov/omb/recovery_faqs_contractors . These FAQs are also linked under <http://www.FederalReporting.gov> .
- (b) This contract requires the contractor to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.
- (c) Reports from Contractor for all work funded, in whole or in part, by the Recovery Act, are due no later than the 10th day following the end of each calendar quarter. The Contractor shall review the Frequently Asked Questions (FAQs) for Federal Contractors before each reporting cycle and prior to submitting each quarterly report as the FAQs may be update from time-to-time. The first report is due not later than the 10th day after the end of the calendar quarter in which the Contractor received the award. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter. For information on when the Contractor shall submit its final report, see http://www.whitehouse.gov/omb/recovery_faqs_contractors .
- (d) The Contractor shall report the following information, using the online reporting tool available at <http://www.FederalReporting.gov> .
 - (1) The Government contract and order number, as applicable.
 - (2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the government's on-line reporting tool.
 - (3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar quarter.

- (4) Program or project title, if any.
- (5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure.
- (6) An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (i.e., not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.
- (7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the Contractor's and first-tier subcontractors' workforce for all first-tier subcontracts valued at \$25,000 or more. At a minimum, the contractor shall provide—
 - (i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the Contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and
 - (ii) An estimate of the number of jobs created and jobs retained by the prime Contractor and all first-tier subcontracts valued at \$25,000 or more, in the United States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at http://www.whitehouse.gov/omb/recovery_faqs_contractors.
- (8) Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract is awarded if—
 - (i) In the Contractor's preceding fiscal year, the Contractor received—
 - (A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
 - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
 - (ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.
- (9) For subcontracts valued at less than \$25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under \$300,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.

- (10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is valued at \$25,000 or more and not subject to reporting under paragraph 9, the Contractor shall require the subcontractor to provide the information described in paragraphs (d)(1)(i), (ix), (x), (xi) and (xii) of this section to the Contractor for the purposes of the quarterly report. The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The Contractor shall provide detailed information on these first-tier subcontracts as follows:
- (i) Unique identifier (DUNS Number) 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) The applicable North American Industry Classification System (NAICS) code.
 - (vi) Funding agency.
 - (vii) 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.
 - (viii) Subcontract number (the contract number assigned by the prime contractor).
 - (ix) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.
 - (x) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.
 - (xi) Names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded if—
 - (A) In the subcontractor's preceding fiscal year, the subcontractor received—
 - (1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
 - (2) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
 - (B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.
 - (xii) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the subcontractor's workforce. At a minimum, the subcontractor shall provide—
 - (A) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the subcontractor's existing practice for describing jobs as long as the terms

used are widely understood and describe the general nature of the work;
and

- (B) An estimate of the number of jobs created and jobs retained by the subcontractor in the United States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at http://www.whitehouse.gov/omb/recovery_faqs_contractors.

(End of clause)

14. FAR 52.215-2 Audit and Records -- Negotiation (Alt I) (Mar 2009)

- (a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.
- (c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to --
- (1) The proposal for the contract, subcontract, or modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;
 - (3) Pricing of the contract, subcontract, or modification; or
 - (4) Performance of the contract, subcontract or modification.
- d) *Comptroller General or Inspector General.*
- (1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, shall have access to and the right to—
 - (i) Examine any of the Contractor's or any subcontractor's records that pertain to and involve transactions relating to this contract or a subcontract hereunder;
and
 - (ii) Interview any officer or employee regarding such transactions.
 - (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

- (e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating --
- (1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
 - (2) The data reported.
- (f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition --
- (1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
 - (2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
- (g)(1) Except as provided in paragraph (g)(2) of this clause, the Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract. The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.
- (2) The authority of the Inspector General under paragraph (d)(1)(ii) of this clause does not flow down to subcontracts.

(End of Clause)

15. FAR 52.244-6 -- Subcontracts for Commercial Items. (Jun 2010)

[Addresses Whistleblower Protections under ARRA in paragraph (c)(1)(ii)]

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

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

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

- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c)
- (1) The Contractor shall insert the following clauses in subcontracts for commercial items:

- (i) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)), if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.
- (ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.
- (iii) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- (iv) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
- (v) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sep 2006) (38 U.S.C. 4212(a));
- (vi) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
- (vii) [Reserved]
- (viii) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).
- (ix) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

- (d) The Contractor shall include the terms of this clause, including this paragraph (d), but not including paragraph (e), in subcontracts awarded under this contract.
- (e) To the maximum extent practicable, when the Contractor acts as a purchasing agent for the Government with respect to a purchase that exceeds the simplified acquisition threshold, the Contractor shall conduct market research (10 U.S.C. 2377(c)) to—
 - (i) 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—
 - (A) Meet the agency's requirements;
 - (B) Could be modified to meet the agency's requirements; or
 - (C) Could meet the agency's requirements if those requirements were modified to a reasonable extent; and
 - (ii) Determine the extent to which commercial items or nondevelopmental items could be incorporated at the component level.

(End of clause)

**WORK AUTHORIZATION
U.S. DEPARTMENT OF ENERGY CONTRACT WORK AUTHORIZATION**

1a. Project Title: NTS Recovery Act Project		1b. Work Proposal Number (if applicable): VL-NV-0080
2. Headquarters Program Point of Contact. Name: Cynthia Anderson Organization Code: EM-3 Telephone No.: 202-586-2083		
3. Headquarters Budget Point of Contact. Name: George Garey Organization Code: EM-31 Telephone No.: 301-903-7948		
4. Responsible Program: Environmental Management		5. Responsible Secretarial Officer: Ines Triay EM-1
6. Responsible Field Organization: NNSA Nevada Site Office		
7a. Site and Facility Management Contractor: National Security Technologies, LLC		7b. Contractor Point of Contact.
Name: John Ciucci Telephone No.: 702-295-0473		
8. Work Authorization Number: RA-10-001		9. Revision Number: 05
10. Funds Authorized. *See Page 4, Paragraph E., Funds Authorized. Budget and Reporting Code: FD0320; FD0411; FD0430; FF0111; FF0112; FD0530010 Previous: \$7,900,000.00 Change: +\$250,000.00 Current: \$9,550,000.00		
11. Performance Period Covered by Funds. From: Dec 17, 2009 To: Sep 30, 2010		12. Work Start Date: Dec 17, 2009
		13. Expected Completion Date: Sep 30, 2010
14. Statement of Work: See American Recovery and Reinvestment Act Requirements (Attachment 1) for a description of the Statement of Work, milestones, deliverables, performance measures/expectations and other requirements mandated by the American Recovery and Reinvestment Act.		
15. Reporting Requirements (Status reports, scientific and technical information or similar):		
16. Work Authorization Program Official. Name (typed): _____ Signature: <i>N/A</i> Date: _____		
17. DOE Field Organization Official. Name (typed): _____ Signature: <i>N/A</i> Date: _____		
18. Contractor's Authorized Representative. Name (typed): _____ Signature: <i>N/A</i> Date: _____		
19. DOE Contracting Officer (or delegated representative). Name (typed): Darby A. Dieterich Signature: <i>Darby A. Dieterich</i> Date: <i>9/28/10</i>		
*See paragraph E of the American Recovery and Reinvestment Act Requirements (Attachment 1) for total funds authorized.		

American Recovery and Reinvestment Act Requirements (Attachment 1)

- A. The specific Statement of Work funded by this Work Authorization pursuant to contract **DE-AC52-06NA25946** clause B-9999, clause H-9999 and to the American Recovery and Reinvestment Act, Pub. L. 111-5, (Recovery Act) is as follows:

Recovery Act Project Statement of Work
<ul style="list-style-type: none">▪ Maintain the capability to safely and compliantly receive and dispose 2M ft3 of Low-Level Waste (LLW) and Mixed LLW (MLLW) at the Area 5 Radioactive Waste Management Site in support of the U.S. Department of Energy (DOE) Complex in Fiscal Year 2010.▪ Provide operations management and oversight of daily disposal operations involving a Category 2 non-reactor nuclear facility.▪ Oversee and manage the craft and non-manual labor in support of waste receipt and disposal.▪ Review and assist Radioactive Waste Acceptance Program/Waste Acceptance Review Panel with generator waste profile review and approval.▪ Act as liaison for the NNSA/NSO and waste generators across the DOE complex. Resolve generator issues and inquiries involving waste forecasts and allocations, shipment projections and scheduling, waste acceptance criteria clarification, and waste transportation.▪ Prepare preliminary/final waste forecast data, waste disposal fee allocation projections, and weekly/monthly waste volume tracking trending information.▪ Provide Environmental, Safety, and Health support to Area 5 Disposal Operations by ensuring compliance with DOE Orders, Integrated Safety Management, and company policies/procedures.▪ Maintain and provide technical support of the key low-level radioactive waste data (i.e., Low-level Waste Information System, Package Shipment Disposal Request, etc.) associated with the radioactive waste disposal sites.▪ Conduct required Documented Safety Analysis and Resource Conservation and Recovery Act inspections associated with the Area 5 Radioactive Waste Management Complex (RWMC).▪ Provide radiological control measures for receipt and disposal of LLW/MLLW. Duties include radiation checks at entry/exit control points, calibration of radiation instruments, and waste meets radiological acceptance criteria.▪ Maintain safe and compliant operations of the buildings, fences, roads, HVAC systems, and other features of the facilities associated with the Area 5 RWMC.
<p>Total overall estimated cost is \$10,118,222 at time of definitization. In the event additional funding is not received, any outstanding work scope identified under WA RA-10-001 will be funded by DOE EM at such time as the Recovery Act funding is exhausted.</p>

B. The specific milestones for this Work Authorization are as follows:

- **Approval of the Baseline Change Requests supporting this activity were approved by NNSA/AMEM on February 12, 2010.**

C. The specific deliverables for this Work Authorization are as follows:

- **Monthly reports indicating ARRA and non-ARRA LLW/MLLW volumes received and disposed at the Area 5 RWMC by generator and remaining ARRA reporting.**

D. The specific performance measures/expectations must be connected to the Recovery Act work under this Work Authorization. The specific performance measures/expectations for this Work Authorization are as follows:

- **Maintain the capability to safely and compliantly receive and dispose 2M ft³ of Low-Level Waste (LLW) and Mixed LLW at the Area 5 Radioactive Waste Management Site in support of the U.S. Department of Energy (DOE) Complex in Fiscal Year 2010.**

E. The funds authorized for this Work Authorization are subject to the following:

1. Pursuant to clause B-9999 and the clause in Section I, entitled "Obligation of Funds," total funds in the amount of \$9,550,000.00** are obligated herein and made available for payment of allowable costs and fee earned related only to the Recovery Act work from *December 17, 2009* of this Work Authorization *RA-10-001* through *September 30, 2010*. Associated accounting and appropriation data is:

** Note: The definitized value of the work scope set forth in Work Authorization RA-10-001 is \$10,118,222.00, however, only \$9,550,000.00 is currently available. Additional funding will be provided as it is received. In the event additional funding is not received, any outstanding work scope identified under WA **RA-10-001** will be funded by DOE EM at such time as the Recovery Act funding is exhausted.)

Accounting and Appropriations Data

Level Name	Fund	Appropriation Year	Allottee	Reporting Entity	Object Class	Program	Project	WFO	Amount
Level	1	2	3	4	5	6	7	8	9
Numerical Characters	06049	2009	01	100035	25400	1111337	2002042	000000	\$ 700,000
Numerical Characters	06049	2009	01	100035	25400	1111375	2002100	000000	\$2,000,000
Numerical Characters	06049	2009	01	100035	25400	1111343	2002102	000000	\$2,000,000
Numerical Characters	05998	2009	01	100035	25400	1111363	2002120	000000	\$1,600,000
Numerical Characters	05998	2009	01	100035	25400	1111364	2002130	000000	\$1,600,000
Numerical Characters	06049	2009	01	100035	25400	1111404	2002153	000000	\$1,400,000
Numerical Characters	06049	2009	01	100035	25400	1111375	2002100	000000	\$250,000

2. Baseline and Reporting Requirements for Work Performed under the Recovery Act

This paragraph defines the unique requirements for the Contractor's project management baseline and associated reporting requirements to address the contract performance requirements to be performed as identified within this Work Authorization which are funded under the provisions of the American Recovery and Reinvestment Act of 2009 (Recovery Act).

Baseline Requirements

- a. For purposes of this paragraph, the "pre-definitized period" is defined as that timeframe from the date of issuance of the Undefined Work Authorization number **RA-10-001** directing the contractor to begin the Recovery Act work until the work is definitized and the update (Definitized Work Authorization Modification) has been executed by both the Contractor and Contracting Officer. All requirements for plans and deliverables during the pre-definitized period shall be based on the definitization time period of 30 days after issuance of the Undefined Work Authorization or expenditure of 30% of the estimated value, *whichever comes first*.

(The pre-definitized period is sequenced with specific deliverables and actions each 30 days. These deliverables and actions may occur in less than 30 days based on the project size, scope, and level of confidence in current NTB/OPER, but no more than 30 day periods.)

- b. During the pre-definitized period, the Contractor shall develop and deliver to the Contracting Officer the following:
1. Within 30 days after issuance of Work Authorization Number **RA-10-001**, the Contractor shall provide a work plan for performance of that portion of the work

specified in Paragraphs A. through D. (of this Work Authorization) covering the Statement of Work and specific milestones, deliverables, and performance measures/expectations scheduled to be performed during the 180-day period after issuance of Work Authorization Number **RA-10-001**. This plan shall include the following:

- i. Product-oriented Work Breakdown Structure (WBS) and WBS dictionary in alignment with the Statement of Work, as modified for the Recovery Act work, to include performance of Recovery Act work totally within distinctly defined, separately tracked and uniquely managed WBS elements;
 - ii. Monthly spend plan consistent with the Statement of Work, completely segregating the non-Recovery Act work from the Recovery Act funded portions of the Statement of Work;
 - iii. Crosswalk of Statement of Work WBS elements and associated planned milestones, metrics, and estimated costs (at a high confidence level), at the Activity Building Block (ABB) level, between the current base program/project Near-Term Baseline (NTB) and/or Out-year Planning Estimate Range (OPER) and the Recovery Act work;
 - iv. Milestone list including, but not limited to, major hiring actions that create newly “created” or “retained” jobs by the Contractor or first tier subcontractors in accordance with paragraph F.12. of this Work Authorization, key starts and completions, enforceable regulatory dates, approval of key regulatory decisions, project critical decisions, delivery of critical Government Furnished Services and Items; and
 - v. Planned quarterly summary of jobs “created” or “retained” by the Contractor and first tier subcontractors as defined in paragraph F.12 of this Work Authorization.
2. Within 30 days after issuance of Work Authorization Number **RA-10-001**, the Contractor shall propose a Performance Baseline for the complete work specified in Paragraph C. Statement of Work. This baseline shall use control accounts that will be made up of work packages. The WBS elements at the lowest level should roll up within the WBS structure and clearly identify the entire work to be performed. The WBS shall clearly distinguish all non-Recovery Act work from all Recovery Act work. The proposed Performance Baseline shall include the following:
- i. The Contractor shall propose a performance baseline, at a high confidence level, for the work to be performed, including the pre-definitized period and the post-definitized period. This baseline shall be based upon the work and schedule included in Work Authorization Number **RA-10-001** and the Contractor’s cost proposal. A month-by-month baseline or budgeted cost of work scheduled (BCWS)/planned value (PV) must be developed for the complete Recovery Act work. This will be the original baseline for Recovery Act work and shall include

all of the work by WBS, including both the pre- and post- definitized periods, and the Contractor's defined management reserve. The sum of these three items (estimated cost for the pre-definitized period, estimated cost for the post-definitized period, and the management reserve) shall equal the Contractor's proposed estimated cost for the Recovery Act work. This performance baseline is subject to independent project review and certification before approval by the Government.

- ii. A network logic schedule utilizing Primavera will be developed at the activity level for each control account which includes milestones. The schedule must be resource loaded and coded to allow summarization of lower level activities through the control account for the complete Recovery Act work.
- iii. The proposed Performance Baseline shall also include the planned quarterly summary of jobs "created" or "retained" by the Contractor and first tier subcontractors as defined in paragraph F.12. of this Work Authorization.

Deliverables supporting the Recovery Act performance baseline shall include all deliverables required under existing contract requirements, those Recovery Act deliverable and reporting requirements specified in this Work Authorization, *and those Recovery Act-unique deliverables listed below*. For all common deliverables, the data shall be clearly segregated and distinguished between non-Recovery Act work and Recovery Act work, as well as summing to complete contract totals.

- a. *Work breakdown structure and associated dictionary;*
- b. *List of planning basis and assumptions;*
- c. *Cost baseline description document that includes the basis of cost estimate;*
- d. *Schedule baseline that employs a critical path method and is resources loaded such that earned value can be measured;*
- e. *Organizational breakdown structure;*
- f. *Responsibility assignment matrix that identifies Control Account Managers;*
- g. *Earned value management system description and a copy of the letter of certification against ANSI/EIA-748-B, "Earned Value Management Systems;"*
- h. *Project controls system description document;*
- i. *Risk management plan with results of qualitative and quantitative analysis including S-curves, cost and schedule contingency determinations, risk mitigation/risk response plans, and risk register;*
- j. *All work packages;*
- k. *Technical design documentation;*
- l. *Documented safety analysis;*
- m. *Safety evaluation report (if required);*
- n. *Safety design strategy;*

- o. *Integrated safety management system description document and latest annual certification;*
- p. *NEPA documentation (analysis of environmental impacts); and*
- q. *Regulatory decision documents.*

These documents shall be submitted to the Contracting Officer to support DOE review and baseline approval. The Contracting Officer may identify other documents as needed to support project reviews and audits.

3. The contractor shall support resolution of IPR or External Independent Review (EIR) corrective actions for the performance baseline submitted.
- c. During the pre-definitized period, the Contractor shall determine the budgeted cost of work performed (BCWS)/earned value (EV) for budgeted cost for work performed (BCWP)/planned value (PV) on a monthly basis utilizing measurable units associated with each activity in the schedule (e.g., square foot reduction, number of TRU shipments, foot print reduction, etc.), as appropriate, that will allow the reporting of the Contractor's progress in accordance with the reporting requirements specified in paragraph F.12. of this Work Authorization. The associated actual cost of work performed (ACWP)/actual cost (AC), cost and schedule variances and performance indices, and variance analyses shall be reported monthly. Performance against the Recovery Act performance baseline shall be tracked separately from other work under the contract funded by other appropriations.
 - d. Upon negotiation and execution of the Definitized Work Authorization Modification, the performance baseline documentation submitted in accordance with paragraph b.2 above shall be revised by the Contractor to reconcile cost estimates and WBS elements, if necessary, consistent with the Definitized Work Authorization Modification.

Reporting Requirements

- e. Within 30 days of definitization of the Recovery Act work, the Contractor shall begin reporting against the established performance baseline in accordance with the reporting requirements specified under existing contract requirements, those reporting requirements specified in this Work Authorization, *and those Recovery Act-unique deliverables listed below.* Performance against the Recovery Act work shall be tracked and reported separately from other work under the contract funded by other appropriations.
- f. These reports shall be provided to the Contracting Officer on a monthly basis.
 1. *Contract Performance Report (Refer to OMB No. 0704-0188 or DD FORM 2734/1, MAR 05) :Format 1 - Work Breakdown Structure, Format 3 - Baseline, and Format 5 - Explanations and Problem Analyses.*
 2. *A Milestone report from Primavera reflecting status of all milestones being reported with columns for the scope, original planned date, current planned date, and the actual date the milestone was completed.*

A funds management report by Budgeting & Reporting (B&R) codes that identifies the amount of funds obligated to the contract and the amount of funds obligated to the contractor, and committed and expended by the contractor.

F. The other requirements mandated by the American Recovery and Reinvestment Act, which is applicable only to the Recovery Act work, are as follows:

1. Subcontracts: The Contractor is informed of the Government's preference, to the maximum extent possible, when issuing subcontracts funded under this Work Authorization for Recovery Act work, the subcontracts should be awarded as fixed priced actions using competitive procedures and documented accordingly in the event fixed priced/competitive procedures are not utilized.

2. Definitions:

For purposes of this paragraph, "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. 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.

3. Flow Down Provision

The Contractor must include the below requirements in every subcontract that is funded, in whole or in part, by the Recovery Act unless the subcontract is with an individual.

4. Segregation and Payment of Costs

The 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. The Recovery Act funds can be used in conjunction with other funding as necessary to complete projects. However, the Contractor must ensure that the project contains the authorized Treasury Accounting Symbol (TAS) approved by the Contracting Officer to ensure linkage between

procurement and financial data. The Contractor should issue separate contracts (if subcontracted) for the Recovery Act project tasks to ensure compliance with the tracking and reporting requirements of the Recovery Act and related Guidance.

5. Prohibition on Use of Funds

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

6. Wage Rates

All laborers and mechanics employed by the Contractor 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>.

7. Publication

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

8. Registration requirements

The Contractor shall ensure that all first-tier subcontractors have a DUNS number and are registered in the Central Contractor Registration (CCR) within 10 days after receipt of subcontract.

9. Utilization of Small Business

The 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.

10. Access

As required by the Recovery Act, the Recovery Accountability and Transparency Board (The Board) and its representatives are authorized to conduct audits and reviews of contracts that use Recovery Act funds. In addition to having access to

records of the contractor and any of its subcontractors, and the right to interview any officer or employee of the contractor or subcontractor, the Board is also authorized to issue and enforce subpoenas to compel the testimony at public hearings, or otherwise, of persons who are not Federal officers or employees.

11. Certification

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.

Note: The following paragraphs, 12, 13, 14, and 15 are interim FAR clauses that are only applicable to this Work Authorization. These interim FAR clauses are in effect until the FAR is amended to implement, in final, provisions of the Recovery Act. The Contractor agrees that the Contracting Officer may unilaterally modify this Work Authorization to incorporate the final FAR clauses that implement the Recovery Act, and the following paragraphs will no longer be valid, and this Work Authorization will be considered modified to add the final FAR clauses.

CLAUSES 12-15 ARE UPDATED TO REFLECT THE FINAL FAR CLAUSES REFERENCED ABOVE

12. **FAR 52.204-11 – American Recovery and Reinvestment Act—Reporting Requirements. (JUL 2010)**

[Applicable to all ARRA Work Authorizations from the date this modification is executed. The revised clause requires first-tier subcontractors with Recovery Act funded awards of \$25,000 or more to report jobs information to the prime contractor for reporting into FederalReporting.gov.]

- (a) *Definitions.* For definitions related to this clause (*e.g.*, contract, first-tier subcontract, total compensation, etc.) see the Frequently Asked Questions (FAQs) available at http://www.whitehouse.gov/omb/recovery_faqs_contractors. These FAQs are also linked under <http://www.FederalReporting.gov>.
- (b) This contract requires the contractor to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.
- (c) Reports from Contractor for all work funded, in whole or in part, by the Recovery Act, are due no later than the 10th day following the end of each calendar quarter. The Contractor shall review the Frequently Asked Questions (FAQs) for Federal Contractors before each reporting cycle and prior to submitting each quarterly report as the FAQs may be update from time-to-time. The first report is due not later than the 10th day after the end of the calendar quarter in which the Contractor received the award. Thereafter, reports shall be submitted no later than the 10th day after the end of

each calendar quarter. For information on when the Contractor shall submit its final report, see http://www.whitehouse.gov/omb/recovery_faqs_contractors .

- (d) The Contractor shall report the following information, using the online reporting tool available at <http://www.FederalReporting.gov> .
- (1) The Government contract and order number, as applicable.
 - (2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the government's on-line reporting tool.
 - (3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar quarter.
 - (4) Program or project title, if any.
 - (5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure.
 - (6) An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (i.e., not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.
 - (7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the Contractor's and first-tier subcontractors' workforce for all first-tier subcontracts valued at \$25,000 or more. At a minimum, the contractor shall provide—
 - (i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the Contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and
 - (ii) An estimate of the number of jobs created and jobs retained by the prime Contractor and all first-tier subcontracts valued at \$25,000 or more, in the United States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at http://www.whitehouse.gov/omb/recovery_faqs_contractors .
 - (8) Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract is awarded if—
 - (i) In the Contractor's preceding fiscal year, the Contractor received—

- (A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
 - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
 - (ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.
- (9) For subcontracts valued at less than \$25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under \$300,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.
- (10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is valued at \$25,000 or more and not subject to reporting under paragraph 9, the Contractor shall require the subcontractor to provide the information described in paragraphs (d)(1)(i), (ix), (x), (xi)m and (xii) of this section to the Contractor for the purposes of the quarterly report. The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The Contractor shall provide detailed information on these first-tier subcontracts as follows:
- (i) Unique identifier (DUNS Number) 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) The applicable North American Industry Classification System (NAICS) code.
 - (vi) Funding agency.
 - (vii) 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.
 - (viii) Subcontract number (the contract number assigned by the prime contractor).
 - (ix) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.
 - (x) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.
 - (xi) Names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded if—
 - (A) In the subcontractor's preceding fiscal year, the subcontractor received—

- (1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
 - (2) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
 - (B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.
 - (xii) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the subcontractor's workforce. At a minimum, the subcontractor shall provide—
 - (A) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the subcontractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and
 - (B) An estimate of the number of jobs created and jobs retained by the subcontractor in the United States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at http://www.whitehouse.gov/omb/recovery_faqs_contractors.
- (End of clause)

13. FAR 52.215-2 Audit and Records -- Negotiation (Alt I) (Mar 2009)

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

have the right to examine and audit all of the Contractor's records, including computations and projections, related to --

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

d) *Comptroller General or Inspector General.*

(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, shall have access to and the right to—

- (i) Examine any of the Contractor's or any subcontractor's records that pertain to and involve transactions relating to this contract or a subcontract hereunder; and
- (ii) Interview any officer or employee regarding such transactions.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating --

- (1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
- (2) The data reported.

(f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition -

- (1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
- (2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g)(1) Except as provided in paragraph (g)(2) of this clause, the Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract. The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(2) The authority of the Inspector General under paragraph (d)(1)(ii) of this clause does not flow down to subcontracts.

(End of Clause)

14. **FAR 52.225-23 Required Use of American Iron, Steel, and Other Manufactured Goods--Buy American Act--Construction Materials Under Trade Agreements (Aug 2009)**

Buy American. In the event this action is considered construction work as defined under the Federal Acquisition Regulation, the following FAR clause 52.225-23 applies to this action]

(a) Definitions. As used in this clause—

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

“Domestic construction material” means—

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

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

“Free trade agreement (FTA) country construction material” means a construction material that—

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

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

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

“Manufactured construction material” means any construction material that is not unmanufactured construction material.

“Recovery Act designated country” means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom);
- (2) A Free Trade Agreement country (FTA)(Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or
- (3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia).

“Recovery Act designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, or a least developed country 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.

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

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

(b) Construction materials.

- (1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) and the Buy American Act (41 U.S.C. 10a-10d) do not apply to Recovery Act designated country construction material. Consistent with U.S. obligations under international agreements, this clause implements—
 - (i) Section 1605 of the Recovery Act by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and
 - (ii) The Buy American Act by providing a preference for unmanufactured domestic construction material.

- (2) The Contractor shall use only domestic or Recovery Act designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

- (3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

-----NONE-----

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

- (4) The Contracting Officer may add other construction material to the list in paragraph (b)(3) of this clause if the Government determines that—
 - (i) The cost of domestic construction material would be unreasonable.
 - (A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the overall cost of the contract by more than 25 percent;
 - (B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - (ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
 - (iii) The application of the restriction of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

- (c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.
 - (1)
 - (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—
 - (A) A description of the foreign and domestic construction materials;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) 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 Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable 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 the section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material other than that covered by trade agreements is noncompliant with the applicable Act.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Cost Comparison

Construction material description	Unit of measure	Quantity	Cost (dollars) *
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2			
Foreign construction material			
Domestic construction material			

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.][Include other applicable supporting information.]
[* Include all delivery costs to the construction site.]

(End of clause)

15. **FAR 52.203-15 – Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009. (JUN 2010)**

(a) The Contractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act).

(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.

(End of clause)

**/WORK AUTHORIZATION
U.S. DEPARTMENT OF ENERGY CONTRACT WORK AUTHORIZATION**

1a. Project Title: NTS Recovery Act Project		1b. Work Proposal Number (if applicable): VL-NV-0030
2. Headquarters Program Point of Contact. Name: Cynthia Anderson Organization Code: EM-3 Telephone No.: 202-586-2083		
3. Headquarters Budget Point of Contact. Name: George Garey Organization Code: EM-31 Telephone No.: 301-903-7948		
4. Responsible Program: Environmental Management		5. Responsible Secretarial Officer: Ines Triay EM-1
6. Responsible Field Organization: NNSA Nevada Site Office		
7a. Site and Facility Management Contractor: National Security Technologies, LLC Name: John Cuicci Telephone No.: 702-295-0473		7b. Contractor Point of Contact.
8. Work Authorization Number: RA-09-001		9. Revision Number: 08
10. Funds Authorized (\$ in thousands). *See Page 4, Paragraph E., Funds Authorized. Budget and Reporting Code: FD0621000 Previous: \$33,850,358.00 Change: \$0 Current: \$33,850,358.00		
11. Performance Period Covered by Funds. From: June 4, 2009 To: Sep 30, 2011		12. Work Start Date: June 4, 2009
		13. Expected Completion Date: Sep 30, 2011
14. Statement of Work: See American Recovery and Reinvestment Act Requirements (Attachment 1) for a description of the Statement of Work, milestones, deliverables, performance measures/expectations and other requirements mandated by the American Recovery and Reinvestment Act.		
15. Reporting Requirements (Status reports, scientific and technical information or similar):		
16. Work Authorization Program Official. Name (typed): _____ Signature: N/A Date: _____		
17. DOE Field Organization Official. Name (typed): _____ Signature: N/A Date: _____		
18. Contractor's Authorized Representative. Name (typed): _____ Signature: N/A Date: _____		
19. DOE Contracting Officer (or delegated representative). Name (typed): Darby A. Dieterich Signature: Darby A. Dieterich Date: 9/28/10		
*See paragraph E of the American Recovery and Reinvestment Act Requirements (Attachment 1) for total funds authorized. **The revision number will consist of a 2-digit program identifier, 4-digit sequential number, and the last digit of the fiscal year.		

American Recovery and Reinvestment Act Requirements (Attachment 1)

- A. The specific Statement of Work funded by this Work Authorization pursuant to contract **DE-AC52-06NA25946** clause B-9999, clause H-9999 and to the American Recovery and Reinvestment Act, Pub. L. 111-5, (Recovery Act) is as follows:

Recovery Act Project Statement of Work
<ul style="list-style-type: none">▪ Installation of two groundwater characterization/monitoring wells (one well in 2009 and one in 2011) in Pahute Mesa for the Underground Test Area (UGTA) project. (The 2009 well will require an offset due to down-hole field conditions.)▪ Provide all labor, materials, and equipment to complete demolition of the Pluto Disassembly Facility; the Reactor Maintenance, Assembly, and Disassembly (RMAD) Facility; and two ancillary structures (i.e. furnace piping and a moveable shed [Building 3211]) associated with the Test Cell C Facility.▪ Conduct characterization support for the Corrective Action Investigation Plans and Corrective Action Decision Documents at Soils Corrective Action Units 106, 367, 374, and 375.▪ Provide support for remediation activities at Industrial Sites Corrective Action Unit 408.▪ Conduct characterization support for the Corrective Action Investigation Plan and Draft Corrective Action Decision Document at Soils Corrective Action Unit 365.
Total overall estimated cost is \$35,678,000.00.

- B. The specific milestones for this Work Authorization are as follows:

- **Complete demolition of furnace piping and movable shed associated with Test Cell C**
- **Initiate drilling of first accelerated well in Pahute Mesa**
- **Complete drilling of first accelerated well in Pahute Mesa**
- **Initiate demolition of RMAD**
- **Initiate demolition of Pluto**
- **Complete demolition of RMAD**
- **Complete demolition of Pluto**
- **Initiate drilling of second accelerated well in Pahute Mesa**
- **Complete drilling of second accelerated well in Pahute Mesa**
- **Complete review of Corrective Action Investigation Plan (CAIP) for first contaminated soil Corrective Action Unit**
- **Complete review of Corrective Action Decision Document (CADD) for first contaminated soil Corrective Action Unit**
- **Complete review of CAIP for second contaminated soil Corrective Action Unit**
- **Complete review of CADD for second contaminated soil Corrective Action Unit**
- **Complete review of CAIP for third contaminated soil Corrective Action Unit**
- **Complete review of CADD for third contaminated soil Corrective Action Unit**

- Complete review of CAIP for fourth contaminated soil Corrective Action Unit
- Complete review of CADD for fourth contaminated soils Corrective Action Unit.
- Complete review of revised Streamlined Approach for Environmental Restoration (SAFER) document for industrial site Corrective Action Unit
- Complete review of Closure Report (CR) for industrial site Corrective Action Unit
- Provide waste disposal support for industrial site Corrective Action Unit
- Complete review of CAIP for fifth contaminated soil Corrective Action Unit
- Complete review of Draft CADD for fifth contaminated soil Corrective Action Unit

C. The specific deliverables for this Work Authorization are as follows:

- Daily reports while drilling, and final daily report noting completion of drilling, for each well in Pahute Mesa
- Site Specific Health and Safety Plan for RMAD demolition
- NEPA Checklist for RMAD demolition
- Field Management Plan for RMAD demolition
- Radiological Work Permit for RMAD demolition
- Final Radiological Survey Plan for RMAD demolition
- Real Estate Operating Permit for RMAD demolition
- Weekly status reports for RMAD demolition
- Daily reports during field work for RMAD demolition
- Photo and video documentation for RMAD demolition
- Letter Report for completion of RMAD demolition
- Site Specific Health and Safety Plan for Pluto demolition
- NEPA Checklist for Pluto demolition
- Field Management Plan for Pluto demolition
- Radiological Work Permit for Pluto demolition
- Final Radiological Survey Plan for Pluto demolition
- Real Estate Operating Permit for Pluto demolition
- Weekly status reports for Pluto demolition
- Daily reports during field work for Pluto demolition
- Photo and video documentation for Pluto demolition
- Letter Report for completion of Pluto demolition
- Letter Report for completion of demolition of nuclear furnace piping and movable shed
- Comments on the CAIP for each soils Corrective Action Unit
- Comments on the CADD for each soils Corrective Action Unit
- Comments on the revised SAFER document for the industrial site Corrective Action Unit
- Comments on the CR for the industrial site Corrective Action Unit

D. The specific performance measures/expectations must be connected to the Recovery Act work under this Work Authorization. The specific performance measures/expectations for this Work Authorization are as follows:

- **Completion of two (2) monitoring wells in UGTA**
- **Demolition of two (2) buildings (RMAD and Pluto Facilities)**
- **Demolition of two (2) ancillary structures (nuclear furnace piping and a movable shed) associated with the Test Cell C Facility**

NOTE: Dates for each performance measure/expectation listed above (ranging from June 4, 2009 – Sep 30, 2011) will be negotiated and clearly defined within this section after definitization of this Work Authorization.

E. The funds authorized for this Work Authorization are subject to the following:

1. Pursuant to clause B-9999 and the clause in Section I, entitled “Obligation of Funds,” total funds in the amount of \$33,850,358.00 ** (100% of funds to be obligated in FY 09) are obligated herein and made available for payment of allowable costs and fee earned related only to the Recovery Act work from **June 4, 2009** of this Work Authorization **RA-09-001** through **September 30, 2011**. Associated accounting and appropriation data is:

** The definitized value of the work scope set forth in this Work Authorization is **\$35,678,000.00**, however, only **\$33,850,358.00** of this effort will be supported with Recovery Act funding. The remaining **\$1,827,642.00** necessary to support the work scope identified under this Work Authorization will be funded by DOE EM at such time as the Recovery Act funding is exhausted.

Accounting and Appropriations Data

Level	1	2	3	4	5	6	7	8	9
Numerical Characters	06049	2009	01	100035	25400	1111353	2002070	000000	0000000
Level Name	Fund	Appropriation Year	Allottee	Reporting Entity	Object Class	Program	Project	WFO	Local Use

(Include each appropriation, as applicable, in the above table.)

2. Baseline and Reporting Requirements for Work Performed under the Recovery Act

This paragraph defines the unique requirements for the Contractor’s project management baseline and associated reporting requirements to address the contract performance requirements to be performed as identified within this Work Authorization which are funded under the provisions of the American Recovery and Reinvestment Act of 2009 (Recovery Act).

Baseline Requirements

- For purposes of this paragraph, the “pre-definitized period” is defined as that timeframe from the date of issuance of the Undefined Work Authorization number **RA-09-001** directing the contractor to begin the Recovery Act work until the work is definitized and the update (Definitized Work Authorization Modification) has been executed by both the Contractor and Contracting Officer. All requirements for plans and deliverables during the pre-definitized period shall be based on the definitization time period of 90 days after issuance of the

Undefinitized Work Authorization or expenditure of 30% of the estimated value, whichever comes first.

(The pre-definitized period is sequenced with specific deliverables and actions each 30 days. These deliverables and actions may occur in less than 30 days based on the project size, scope, and level of confidence in current NTB/OPER, but no more than 30 day periods.)

- b. During the pre-definitized period, the Contractor shall develop and deliver to the Contracting Officer the following:
 1. Within 30 days after issuance of Work Authorization Number **RA-09-001**, the Contractor shall provide a work plan for performance of that portion of the work specified in Paragraphs A. through D. (of this Work Authorization) covering the Statement of Work and specific milestones, deliverables, and performance measures/expectations scheduled to be performed during the 180-day period after issuance of Work Authorization Number **RA-09-001**. This plan shall include the following:
 - i. Product-oriented Work Breakdown Structure (WBS) and WBS dictionary in alignment with the Statement of Work, as modified for the Recovery Act work, to include performance of Recovery Act work totally within distinctly defined, separately tracked and uniquely managed WBS elements;
 - ii. Monthly spend plan consistent with the Statement of Work, completely segregating the non-Recovery Act work from the Recovery Act funded portions of the Statement of Work;
 - iii. Crosswalk of Statement of Work WBS elements and associated planned milestones, metrics, and estimated costs (at the 80% confidence level), at the Activity Building Block (ABB) level, between the current base program/project Near-Term Baseline (NTB) and/or Out-year Planning Estimate Range (OPER) and the Recovery Act work;
 - iv. Milestone list including, but not limited to, major hiring actions that create newly “created” or “retained” jobs by the Contractor or first tier subcontractors in accordance with paragraph F.12. of this Work Authorization, key starts and completions, enforceable regulatory dates, approval of key regulatory decisions, project critical decisions, delivery of critical Government Furnished Services and Items; and
 - v. Planned quarterly summary of jobs “created” or “retained” by the Contractor and first tier subcontractors as defined in paragraph F.12 of this Work Authorization.
 2. Within 120 days after issuance of Work Authorization Number **RA-09-001**, the Contractor shall propose a Performance Baseline for the complete work specified in Paragraph C. Statement of Work. This baseline shall use control accounts that will be

made up of work packages. The WBS elements at the lowest level should roll up within the WBS structure and clearly identify the entire work to be performed. The WBS shall clearly distinguish all non-Recovery Act work from all Recovery Act work. The proposed Performance Baseline shall include the following:

- i. The Contractor shall propose a performance baseline, at the high confidence level, for the work to be performed, including the pre-definitized period and the post-definitized period. This baseline shall be based upon the work and schedule included in Work Authorization Number **RA-09-001** and the Contractor's cost proposal. A month-by-month baseline or budgeted cost of work scheduled (BCWS)/planned value (PV) must be developed for the complete Recovery Act work. This will be the original baseline for Recovery Act work and shall include all of the work by WBS, including both the pre- and post- definitized periods, and the Contractor's defined management reserve.. The sum of these three items (estimated cost for the pre-definitized period, estimated cost for the post-definitized period, and the management reserve) shall equal the Contractor's proposed estimated cost for the Recovery Act work. This performance baseline is subject to independent project review and certification before approval by the Government.
- ii. A network logic schedule utilizing Primavera will be developed at the activity level for each control account which includes milestones. The schedule must be resource loaded and coded to allow summarization of lower level activities through the control account for the complete Recovery Act work.
- iii. The proposed Performance Baseline shall also include the planned quarterly summary of jobs "created" or "retained" by the Contractor and first tier subcontractors as defined in paragraph F.12. of this Work Authorization.

Deliverables supporting the Recovery Act performance baseline shall include all deliverables required under existing contract requirements, those Recovery Act deliverable and reporting requirements specified in this Work Authorization, *and those Recovery Act-unique deliverables listed below*. For all common deliverables, the data shall be clearly segregated and distinguished between non-Recovery Act work and Recovery Act work, as well as summing to complete contract totals.

- a. Work breakdown structure and associated dictionary;*
- b. List of planning basis and assumptions;*
- c. Cost baseline description document that includes the basis of cost estimate;*
- d. Schedule baseline that employs a critical path method and is resources loaded such that earned value can be measured;*
- e. Organizational breakdown structure;*
- f. Responsibility assignment matrix that identifies Control Account Managers;*

- g. *Earned value management system description and a copy of the letter of certification against ANSI/EIA-748-B, "Earned Value Management Systems;"*
- h. *Project controls system description document;*
- i. *Risk management plan with results of qualitative and quantitative analysis including S-curves, cost and schedule contingency determinations, risk mitigation/risk response plans, and risk register;*
- j. *All work packages;*
- k. *Technical design documentation;*
- l. *Documented safety analysis;*
- m. *Safety evaluation report (if required);*
- n. *Safety design strategy;*
- o. *Integrated safety management system description document and latest annual certification;*
- p. *NEPA documentation (analysis of environmental impacts); and*
- q. *Regulatory decision documents.*

These documents shall be submitted to the Contracting Officer to support DOE review and baseline approval. The Contracting Officer may identify other documents as needed to support project reviews and audits.

3. The contractor shall support resolution of IPR or External Independent Review (EIR) corrective actions for the performance baseline submitted.
- c. During the pre-definitized period, the Contractor shall determine the budgeted cost of work performed (BCWS)/earned value (EV) for budgeted cost for work performed (BCWP)/planned value (PV) on a monthly basis utilizing measurable units associated with each activity in the schedule (e.g., square foot reduction, number of TRU shipments, foot print reduction, etc.), as appropriate, that will allow the reporting of the Contractor's progress in accordance with the reporting requirements specified in paragraph F.12. of this Work Authorization. The associated actual cost of work performed (ACWP)/actual cost (AC), cost and schedule variances and performance indices, and variance analyses shall be reported monthly. Performance against the Recovery Act performance baseline shall be tracked separately from other work under the contract funded by other appropriations.
 - d. Upon negotiation and execution of the Definitized Work Authorization Modification, the performance baseline documentation submitted in accordance with paragraph b.2 above shall be revised by the Contractor to reconcile cost estimates and WBS elements, if necessary, consistent with the Definitized Work Authorization Modification.

Reporting Requirements

- e. Within 30 days of definitization of the Recovery Act work, the Contractor shall begin reporting against the established performance baseline in accordance with the reporting requirements specified under existing contract requirements, those reporting requirements specified in this Work Authorization, *and those Recovery Act-unique deliverables listed*

below. Performance against the Recovery Act work shall be tracked and reported separately from other work under the contract funded by other appropriations.

- f. These reports shall be provided to the Contracting Officer on a monthly basis.
 - 1. *Contract Performance Report (Refer to OMB No. 0704-0188 or DD FORM 2734/1, MAR 05) ;Format 1 - Work Breakdown Structure, Format 3 - Baseline, and Format 5 - Explanations and Problem Analyses.*
 - 2. *A Milestone report from Primavera reflecting status of all milestones being reported with columns for the scope, original planned date, current planned date, and the actual date the milestone was completed.*

A funds management report by Budgeting & Reporting (B&R) codes that identifies the amount of funds obligated to the contract and the amount of funds obligated to the contractor, and committed and expended by the contractor.

- F. The other requirements mandated by the American Recovery and Reinvestment Act, which is applicable only to the Recovery Act work, are as follows:

- 1. Subcontracts: The Contractor is informed of the Government's preference, to the maximum extent possible, when issuing subcontracts funded under this Work Authorization for Recovery Act work, the subcontracts should be awarded as fixed priced actions using competitive procedures and documented accordingly in the event fixed priced/competitive procedures are not utilized.

- 2. Definitions:

For purposes of this paragraph, "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. 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.

3. Flow Down Provision

The Contractor must include the below requirements in every subcontract that is funded, in whole or in part, by the Recovery Act unless the subcontract is with an individual.

4. Segregation and Payment of Costs

The 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. The Recovery Act funds can be used in conjunction with other funding as necessary to complete projects. However, the Contractor must ensure that the project contains the authorized Treasury Accounting Symbol (TAS) approved by the Contracting Officer to ensure linkage between procurement and financial data. The Contractor should issue separate contracts (if subcontracted) for the Recovery Act project tasks to ensure compliance with the tracking and reporting requirements of the Recovery Act and related Guidance.

5. Prohibition on Use of Funds

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

6. Wage Rates

All laborers and mechanics employed by the Contractor 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>.

7. Publication

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

8. Registration requirements

The Contractor shall ensure that all first-tier subcontractors have a DUNS number and are registered in the Central Contractor Registration (CCR) within 10 days after receipt of subcontract.

9. Utilization of Small Business

The 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.

10. Access

As required by the Recovery Act, the Recovery Accountability and Transparency Board (The Board) and its representatives are authorized to conduct audits and reviews of contracts that use Recovery Act funds. In addition to having access to records of the contractor and any of its subcontractors, and the right to interview any officer or employee of the contractor or subcontractor, the Board is also authorized to issue and enforce subpoenas to compel the testimony at public hearings, or otherwise, of persons who are not Federal officers or employees.

11. Certification

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.

Note: The following paragraphs, 12, 13, 14, and 15 are interim FAR clauses that are only applicable to this Work Authorization. These interim FAR clauses are in effect until the FAR is amended to implement, in final, provisions of the Recovery Act. The Contractor agrees that the Contracting Officer may unilaterally modify this Work Authorization to incorporate the final FAR clauses that implement the Recovery Act, and the following paragraphs will no longer be valid, and this Work Authorization will be considered modified to add the final FAR clauses.

CLAUSES 12-15 ARE UPDATED TO REFLECT THE FINAL FAR CLAUSES REFERENCED ABOVE

12. FAR 52.204-11 – American Recovery and Reinvestment Act—Reporting Requirements. (JUL 2010)

[Applicable to all ARRA Work Authorizations from the date this modification is executed. The revised clause requires first-tier subcontractors with Recovery Act funded awards of \$25,000 or more to report jobs information to the prime contractor for reporting into FederalReporting.gov.]

- (a) *Definitions.* For definitions related to this clause (e.g., contract, first-tier subcontract, total compensation, etc.) see the Frequently Asked Questions (FAQs) available at

http://www.whitehouse.gov/omb/recovery_faqs_contractors . These FAQs are also linked under <http://www.FederalReporting.gov> .

- (b) This contract requires the contractor to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.
- (c) Reports from Contractor for all work funded, in whole or in part, by the Recovery Act, are due no later than the 10th day following the end of each calendar quarter. The Contractor shall review the Frequently Asked Questions (FAQs) for Federal Contractors before each reporting cycle and prior to submitting each quarterly report as the FAQs may be update from time-to-time. The first report is due not later than the 10th day after the end of the calendar quarter in which the Contractor received the award. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter. For information on when the Contractor shall submit its final report, see http://www.whitehouse.gov/omb/recovery_faqs_contractors .
- (d) The Contractor shall report the following information, using the online reporting tool available at <http://www.FederalReporting.gov> .
 - (1) The Government contract and order number, as applicable.
 - (2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the government's on-line reporting tool.
 - (3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar quarter.
 - (4) Program or project title, if any.
 - (5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure.
 - (6) An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (i.e., not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.
 - (7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the Contractor's and first-tier subcontractors' workforce for all first-tier subcontracts valued at \$25,000 or more. At a minimum, the contractor shall provide—

- (i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the Contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and
 - (ii) An estimate of the number of jobs created and jobs retained by the prime Contractor and all first-tier subcontracts valued at \$25,000 or more, in the United States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at http://www.whitehouse.gov/omb/recovery_faqs_contractors.
- (8) Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract is awarded if—
- (i) In the Contractor's preceding fiscal year, the Contractor received—
 - (A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
 - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
 - (ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.
- (9) For subcontracts valued at less than \$25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under \$300,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.
- (10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is valued at \$25,000 or more and not subject to reporting under paragraph 9, the Contractor shall require the subcontractor to provide the information described in paragraphs (d)(1)(i), (ix), (x), (xi)m and (xii) of this section to the Contractor for the purposes of the quarterly report. The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The Contractor shall provide detailed information on these first-tier subcontracts as follows:
- (i) Unique identifier (DUNS Number) 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) The applicable North American Industry Classification System (NAICS) code.

- (vi) Funding agency.
- (vii) 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.
- (viii) Subcontract number (the contract number assigned by the prime contractor).
- (ix) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.
- (x) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.
- (xi) Names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded if—
 - (A) In the subcontractor's preceding fiscal year, the subcontractor received—
 - (1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
 - (2) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
 - (B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.
- (xii) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the subcontractor's workforce. At a minimum, the subcontractor shall provide—
 - (A) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the subcontractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and
 - (B) An estimate of the number of jobs created and jobs retained by the subcontractor in the United States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at http://www.whitehouse.gov/omb/recovery_faqs_contractors.

(End of clause)

13. FAR 52.215-2 Audit and Records -- Negotiation (Alt I) (Mar 2009)

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

- (b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.
- (c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to --
- (1) The proposal for the contract, subcontract, or modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;
 - (3) Pricing of the contract, subcontract, or modification; or
 - (4) Performance of the contract, subcontract or modification.
- d) *Comptroller General or Inspector General.*
- (1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, shall have access to and the right to—
 - (i) Examine any of the Contractor's or any subcontractor's records that pertain to and involve transactions relating to this contract or a subcontract hereunder; and
 - (ii) Interview any officer or employee regarding such transactions.
 - (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating --
- (1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
 - (2) The data reported.
- (f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for

any longer period required by statute or by other clauses of this contract. In addition -

- (1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
 - (2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
- (g)(1) Except as provided in paragraph (g)(2) of this clause, the Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract. The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.
- (2) The authority of the Inspector General under paragraph (d)(1)(ii) of this clause does not flow down to subcontracts.

(End of Clause)

14. **FAR 52.225-23 Required Use of American Iron, Steel, and Other Manufactured Goods--Buy American Act--Construction Materials Under Trade Agreements (Aug 2009)**

Buy American. In the event this action is considered construction work as defined under the Federal Acquisition Regulation, the following FAR clause 52.225-23 applies to this action]

(a) Definitions. As used in this clause—

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

“Domestic construction material” means—

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

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

“Free trade agreement (FTA) country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of an FTA country; or

- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different construction material distinct from the materials from which it was transformed.

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

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

“Manufactured construction material” means any construction material that is not unmanufactured construction material.

“Recovery Act designated country” means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom);
- (2) A Free Trade Agreement country (FTA)(Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or
- (3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia).

“Recovery Act designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, or a least developed country 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.

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

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

(b) Construction materials.

- (1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) and the Buy American Act (41 U.S.C. 10a-10d) do not apply to Recovery Act designated country construction material. Consistent with U.S. obligations under international agreements, this clause implements—
 - (i) Section 1605 of the Recovery Act by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and
 - (ii) The Buy American Act by providing a preference for unmanufactured domestic construction material.
- (2) The Contractor shall use only domestic or Recovery Act designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.
- (3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:
-----NONE-----
[Contracting Officer to list applicable excepted materials or indicate “none”.]
- (4) The Contracting Officer may add other construction material to the list in paragraph (b)(3) of this clause if the Government determines that—
 - (i) The cost of domestic construction material would be unreasonable.
 - (A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the overall cost of the contract by more than 25 percent;
 - (B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - (ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
 - (iii) The application of the restriction of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

(c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.

(1)

- (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—
 - (A) A description of the foreign and domestic construction materials;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) 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 Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable 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 the section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material other than that covered by trade agreements is noncompliant with the applicable Act.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Cost Comparison

Construction material description	Unit of measure	Quantity	Cost (dollars) *
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Item 1:			
Foreign construction material			
Domestic construction material			
Item 2			
Foreign construction material			
Domestic construction material			

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

[* Include all delivery costs to the construction site.]
(End of clause)

15. FAR 52.203-15 – Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009. (JUN 2010)

(a) The Contractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act).

(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.

(End of clause)

Modification 320

The purpose of this modification is to modify Section I Clause 148, DEAR 970.5244-1, Contractor Purchasing System, due to the revocation of EO 13673, Fair Pay and Safe Workplaces, and add two NNSA Supplemental Directives to Section J, Appendix C, List of Applicable Laws, Regulations, and DOE Directives, as set forth in Attachment 1.

Modification 316

As a result of this modification, Part I, Section I, Contract Clauses, is modified by deleting subparagraph (c) of Clause 23-2, FAR 52.217-9, OPTION TO EXTEND THE TERM OF THE CONTRACT, and substituting the following text:

Modification 312

The purpose of this modification is to delete subparagraph (c) of Clause 23-2, FAR 52.217-9, OPTION TO EXTEND THE TERM OF THE CONTRACT, and substitute the following text:

Modification 311

The purpose of this modification is to update Section I – Contract Clauses, Appendix A – Advance Understandings Human Resources for Profit Contractors, and Appendix C – List of Applicable Laws, Regulations, and DOE Directives as set forth in Attachment 1.

Modification 299

The purpose of this modification is to update DEAR Clause 970.5244-1 – Contractor Purchasing System, and Appendices B (Subcontracting Plan) and C (List of Applicable Laws, Regulations, and DOE Directives) as set forth in Attachment 1

Modification 294

The purpose of this modification is to modify Part I, Section I, Contract Clause 23-3, FAR 52.217-9, Option to Extend the Term of the Contract (Mar 2000), paragraph (c)

Modification 283

The purpose of this modification is to add FAR 52.217-9 *Option to Extend the Term of the Contract (Mar 2000)*

Modification 274

The purpose of this modification is to (1) add updates to the following Clauses in the Table of Contents and the Full Text Clauses Sections. FAR 52.203-5, FAR 52.203-7, FAR 52.203-8, FAR 52.203-10, FAR 52.203-13, FAR 52.203-14, FAR 52.208-8, FAR 52.209-6, FAR 52.219-8, FAR 52.219-9, FAR 52.222-4, FAR 52.222-17, FAR 52.222-21, FAR 52.222-26, FAR 52.222-29, FAR 52.222-35, FAR 52.222-36, FAR 52.222-37, FAR 52.222-50, FAR 52.222-54, FAR 52.222-55, FAR 52.223-16, FAR 52.225-1, FAR 52.225-9, FAR 52.230-2, FAR 52.232-17, FAR 52.232-24, FAR 52.233-1, FAR 52.234-4, FAR 52.244-6 and (2) Change Clause FAR 52.219-25 to RESERVED in Table of Contents and Full Text Clause Section

Modification 250

The purpose of this modification is to (1) add Clause 10-3, FAR 52.203-99 *Prohibition On Contracting With Entities That Require Certain Internal Confidentiality Agreements (Feb*

2015) (*DEVIATION 2015-02*) to the Table of Contents and Full Text Clauses Sections as well as to (2) delete Clause 112, DEAR 970.5204-3 *Access To And Ownership Of Records (Jul 2005)* in its entirety from the Table of Contents and the Full Text Clauses Sections and substitute in lieu thereof the updated Clause 112, DEAR 970.5204-3 *Access To And Ownership Of Records (Oct 2014) (Deviation)*

Modification 242

The purpose of this modification is to (1) modify the Table of Contents, delete the entry for Clause 148, DEAR 970.5244-1 *Contractor Purchasing System (Jan 2013) (Class Deviation)(May 2013)*, in its entirety and substitute in lieu thereof (2) Clause 148, DEAR 970.5244-1 *Contractor Purchasing System (Jan 2013) (Class Deviation) (May 2013)* -- Delete the text of subparagraph (x), *Subcontract Flowdown Requirements*, in its entirety and substitute in lieu thereof

Modification 237

The purpose of this modification is to (1) modify The Table of Contents (2) replace Clause 31-1 modification (3) renumber FAR 52.222-54 and (4) add FAR 52.222-55

Modification 210

The purpose of this modification is to complete an update to Sections I-1 and I-2 as appropriate

Modification Number 196

Part II, Section I, Contract Clauses, is modified by deleting the text of Clause 90, DEAR 952-204-2, *Security*, and substituting in lieu thereof the clause deviation as set forth below.

Modification Number 186

The purpose of this modification is to delete the text of Clause 134, and substitute in lieu thereof:

Modification Number 169

The purpose of this modification is to delete the entire section and substitute the text in lieu thereof:

Modification Number 141

The purpose of this modification is to delete Clause 13, 52.204-9 – *Personal Identity Verification of Contractor Personnel (Sep 2007)*, in its entirety from both the Table of Contents and Full Text Clauses Sections and substituting the text in lieu thereof:

Modification Number 121

The purpose of this modification is to delete Clause 117, 970.5215-4 *COST REDUCTION (AUG 2009)*, in its entirety and substitute the text in lieu thereof

Modification Number 092

The purpose of this modification is to complete an update to Sections B-I of the contract to incorporate all changes resulting from previous modifications and to reflect the negotiation of the removal/update/addition of clauses as appropriate.

PART II – CONTRACT CLAUSES
SECTION I — CONTRACT CLAUSES

I-1 Contract Clauses I

All contract clauses are hereby incorporated in full text. The references cited are from the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) and the Department of Energy Acquisition Regulation (DEAR) (48 CFR Chapter 9). Note: The titles of the clauses are as follows:

Table of Contents

I-1 Contract Clauses	4
Full Text FAR Clauses.....	10
1. FAR 52.202-1 Definitions (Nov 2013).....	10
2 FAR 52.203-3 Gratuities (Apr 1984)	10
3 FAR 52.203-5 Covenant Against Contingent Fees (May 2014)	10
4 FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (Sep 2006)...	11
5 FAR 52.203-7 Anti-Kickback Procedures (May 2014).....	11
6 FAR 52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (May 2014).....	13
7 FAR 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (May 2014).....	13
8 FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Oct 2010).....	14
9 FAR 52.203-13 Contractor Code of Business Ethics and Conduct (Oct 2015)	18
10-1 FAR 52.203-14 Display of Hotline Poster(s) (Oct 2015).....	22
10-2 FAR 52.203-17 Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights (Apr 2014).....	23
10-3 FAR 52.203-19 Prohibition On Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017)	23
11 FAR 52.204-4 Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (May 2011).....	24
12 RESERVED.....	25
13-1 FAR 52.204-9 Personal Identity Verification of Contractor Personnel (Jan 2011).....	25
13-2 FAR 52.204-13 System for Award Management Maintenance (Jul 2013)	25
13-3 FAR 52.204-21 Basic Safeguarding of Covered Contractor Information Systems (Jun 2016)	26
14 FAR 52.208-8 Required Sources for Helium and Helium Usage Data (Apr 2014)....	29
15 FAR 52.209-6 Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Oct 2015).....	30
16 FAR 52.211-5 Material Requirements (Aug 2000)	31
17 FAR 52.211-15 Defense Priority and Allocation Requirement (Apr 2008)	32

18 FAR 52.215-2 Audit and Records -- Negotiation (Oct 2010)–Alternate I (Mar 2009).....	32
19 FAR 52.215-8 Order of Precedence -- Uniform Contract Format (Oct 1997)	33
20 FAR 52.215-12 Subcontractor Certified Cost or Pricing Data (Oct 2010).....	34
21 FAR 52.215-13 Subcontractor Certified Cost or Pricing Data – Modifications (Oct 2010).....	34
22 FAR 52.215-15 Pension Adjustments and Asset Reversions (Oct 2010).....	35
23-1 FAR 52.215-17 Waiver of Facilities Capital Cost of Money (Oct 1997).....	35
23-2 FAR 52.217-9 Option to Extend the Terms of the Contract (Mar 2000)	34
24 FAR 52.219-8 Utilization of Small Business Concerns (Oct 2014)	36
25 FAR 52.219-9 Small Business Subcontracting Plan (Oct 2015).....	37
26 FAR 52.219-16 Liquidated Damages -- Subcontracting Plan (Jan 1999).....	46
27 FAR 52.219-25 RESERVED	47
28 FAR 52.222-1 Notice to the Government of Labor Disputes (Feb 1997)	47
29 FAR 52.222-3 Convict Labor (Jun 2003).....	47
30 FAR 52.222-4 Contract Work Hours and Safety Standards -- Overtime Compensation (May 2014)	48
31-1 FAR 52.222-6 Construction Wage Requirements (May 2014)	48
31-2 FAR 52.222-17 Nondisplacement of Qualified Workers (May 2014)	50
32 FAR 52.222-21 Prohibition of Segregated Facilities (Apr 2015)	55
33 FAR 52.222-26 Equal Opportunity (Apr 2015).....	55
34 FAR 52.222-29 Notification of Visa Denial (Apr 2015)	57
35 FAR 52.222-35 Equal Opportunity for Veterans (Oct 2015).....	57
36 FAR 52.222-36 Equal Opportunity for Workers With Disabilities (Jul 2014)	57
37 FAR 52.222-37 Employment Reports Veterans (Feb 2016).....	57
38 FAR 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)	58
39 FAR 52.222-50 Combating Trafficking in Persons (Mar 2015)	60
40-1 FAR 52.222-54 Employment Eligibility Verification (Oct 2015).....	68
40-2 FAR 52.222-55 Minimum Wages Under Executive Order 13658 (Dec 2015).....	70
41 FAR 52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts (Sep 2013)	75
42 FAR 52.223-3 Hazardous Material Identification and Material Safety Data (Jan 1997)—Alternate I (Jul 1995)	76
43 FAR 52.223-5 Pollution Prevention and Right-to-Know Information (May 2011) – Alternate I (May 2011) – Alternate II (May 2011).....	77
44 FAR 52.223-6 Drug-Free Workplace (May 2001).....	78
45 FAR 52.223-7 Notice of Radioactive Materials (Jan 1997)	80
46 FAR 52.223-9 Estimate of Percentage of Recovered Material Content For EPA Designated Items (May 2008).....	80
47 FAR 52.223-10 Waste Reduction Program (May 2011)	81
48 FAR 52.223-11 Ozone-Depleting Substances (May 2001)	81
49 FAR 52.223-12 Refrigeration Equipment and Air Conditioners (May 1995).....	82
50 FAR 52.223-14 RESERVED	82
51 FAR 52.223-15 Energy Efficiency in Energy-Consuming Products (Dec 2007)	82
52 FAR 52.223-16 Acquisition of EPEAT®-Registered Personal Computer Products (Oct 2015).....	83

53	FAR 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts (May 2008).....	83
54	FAR 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011).....	85
55	FAR 52.223-19 Compliance with Environmental Management Systems (May 2011).....	85
56	FAR 52.224-1 Privacy Act Notification (Apr 1984).....	86
57-1	FAR 52.224-2 Privacy Act (Apr 1984).....	86
57-2	FAR 52.224-3 Privacy Training (Jan 2017).....	82
58	FAR 52.225-1 Buy American – Supplies (May 2014).....	87
59	FAR 52.225-8 Duty-Free Entry (Oct 2010).....	89
60	FAR 52.225-9 Buy American – Construction Materials (May 2014).....	91
61	FAR 52.225-13 Restriction on Certain Foreign Purchases (Jun 2008).....	94
62	FAR 52.229-10 State of New Mexico Gross Receipts and Compensating Tax (Apr 2003) as modified by DEAR 970.2904-1(a).....	95
63	FAR 52.230-2 Cost Accounting Standards (Oct 2015).....	96
64	FAR 52.230-6 Administration of Cost Accounting Standards (Jun 2010).....	97
65	FAR 52.232-17 Interest (May 2014).....	105
66	FAR 52.232-18 Availability of Funds (Apr 1984).....	106
67-1	FAR 52.232-24 Prohibition of Assignment of Claims (May 2014).....	106
67-2	FAR 52.232-40 Providing Accelerated Payments To Small Business Subcontractors (Dec 2013).....	106
68	FAR 52.233-1 Disputes (May 2014) – Alternate I (Dec 1991).....	106
69	FAR 52.233-3 Protest after Award (Aug 1996)—Alternate I (Jun 1985).....	108
70	FAR 52.233-4 Applicable Law for Breach Of Contract Claim (Oct 2004).....	109
71	FAR 52.234-4 Earned Value Management System (May 2014).....	109
72	FAR 52.237-2 Protection of Government Buildings, Equipment, and Vegetation (Apr 1984).....	110
73	FAR 52.237-3 Continuity of Services (Jan 1991).....	110
74	FAR 52.242-1 Notice of Intent to Disallow Costs (Apr 1984).....	111
75	FAR 52.242-13 Bankruptcy (Jul 1995).....	111
76	FAR 52.244-5 Competition in Subcontracting (Dec 1996).....	111
77	FAR 52.244-6 Subcontracts for Commercial Items (Feb 2016).....	111
78	FAR 52.247-1 Commercial Bill of Lading Notations (Feb 2006).....	114
79	FAR 52.247-63 Preference for U.S.-Flag Air Carriers (Jun 2003).....	115
80	FAR 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006).....	116
81	FAR 52.247-67 Submission of Transportation Documents for Audit (Feb 2006).....	118
82	FAR 52.249-6 Termination (Cost-Reimbursement) (May 2004).....	119
83	FAR 52.249-14 Excusable Delays (Apr 1984).....	123
84	FAR 52.250-1 Indemnification Under Public Law 85-804 (Apr 1984)—Alternate I (Apr 1984) (DEVIATION).....	124
85	FAR 52.251-1 Government Supply Sources (Apr 2012).....	127
86	FAR 52.251-2 Interagency Fleet Management System Vehicles and Related Services (Jan 1991).....	127
87	FAR 52.252-6 Authorized Deviations in Clauses (Apr 1984).....	128
88	FAR 52.253-1 Computer Generated Forms (Jan 1991).....	128

Full Text DEAR Clauses	128
89 DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)	128
90 DEAR 952.204-2 SECURITY (OCT 2013) DEVIATION.....	128
91 DEAR 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997)	132
92 DEAR 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS (MAR 2011). 	133
93 DEAR 952.204-75 PUBLIC AFFAIRS (DEC 2000)	133
94 DEAR 952.204-77 COMPUTER SECURITY (AUG 2006)	134
95 DEAR 952.208-7 TAGGING OF LEASED VEHICLES (APR 1984)	135
96 DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009) ALTERNATE I (Undated).....	135
97 DEAR 952.211-71 PRIORITIES AND ALLOCATIONS (ATOMIC ENERGY) (APR 2008).....	137
98 DEAR 952.215-70 KEY PERSONNEL (DEC 2000).....	138
99 DEAR 952.217-70 ACQUISITION OF REAL PROPERTY (MAR 2011).....	138
100 DEAR 952.219-70 DOE MENTOR-PROTÉGÉ PROGRAM (MAY 2000)	138
101 DEAR 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984).....	139
102 DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997).....	139
103 DEAR 952.235-71 RESEARCH MISCONDUCT (JUL 2005).....	139
104 DEAR 952.247-70 FOREIGN TRAVEL (JUN 2010)	142
105 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (OCT 2005) , as modified by DOE Acquisition Letter 2005-15	142
106 DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (AUG 2009).....	146
107 DEAR 970.5203-1 MANAGEMENT CONTROLS (JUN 2007).....	147
108 DEAR 970.5203-2 PERFORMANCE IMPROVEMENT AND COLLABORATION (MAY 2006)	148
109 DEAR 970.5203-3 CONTRACTOR’S ORGANIZATION (DEC 2000) (DEVIATION).....	148
110 DEAR 970.5204-1 COUNTERINTELLIGENCE (DEC 2010)	149
111 DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000).....	149
112 DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (OCT 2014) (DEVIATION)	151
113 DEAR 970.5208-1 PRINTING (DEC 2000).....	153
114 DEAR 970.5211-1 WORK AUTHORIZATION (MAY 2007).....	153
115 DEAR 970.5215-3 CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES—FACILITY MANAGEMENT CONTRACTS (AUG 2009)— ALTERNATE II (AUG 2009) (NNSA CLASS DEVIATION) (MAY 2016)	154
116 DEAR 970.5215-4 COST REDUCTION (NNSA CLASS DEVIATION) (MAR 2011).....	159
117 DEAR 970.5217-1 STRATEGIC PARTNERSHIP PROJECTS PROGRAM (NON- DOE FUNDED WORK) (APRIL 23, 2005).....	163

118 DEAR 970.5222-1 COLLECTIVE BARGAINING AGREEMENTS- MANAGEMENT AND OPERATING CONTRACTS (DEC 2000)	165
119 DEAR 970.5222-2 OVERTIME MANAGEMENT (DEC 2000)	165
120 DEAR 970.5223-1 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000).....	166
121 DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010)	168
122 DEAR 970.5223-6 EXECUTIVE ORDER 13423, STRENGTHENING FEDERAL ENVIRONMENTAL, ENERGY, AND TRANSPORTATION MANAGEMENT (OCT 2010).....	169
123 DEAR 970.5223-7 SUSTAINABLE ACQUISITION PROGRAM (OCT 2010)	169
124 DEAR 970.5226-1 DIVERSITY PLAN (DEC 2000).....	171
125 DEAR 970.5226-2 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000)	172
126 DEAR 970.5226-3 COMMUNITY COMMITMENT (DEC 2000).....	172
127 DEAR 970.5227-2 RIGHTS IN DATA -- TECHNOLOGY TRANSFER (ALTERNATE I) (DEC 2000) (NNSA CLASS DEVIATION) (OCT 2011)	172
128 DEAR 970.5227-3 TECHNOLOGY TRANSFER MISSION (AUG 2002) (NNSA CLASS DEVIATION) (OCT 2011).....	186
129 DEAR 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002).....	197
130 DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)	197
131 DEAR 970.5227-6 PATENT INDEMNITY-SUBCONTRACTS (DEC 2000).....	197
132 DEAR 970.5227-8 REFUND OF ROYALTIES (AUG 2002).....	198
133 DEAR 970.5227-12 PATENT RIGHTS MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, ADVANCE CLASS WAIVER (ALTERNATE I) (AUG 2002) (NNSA CLASS DEVIATION) (OCT 2011).....	199
134 DEAR 970.5228-1 INSURANCE—LITIGATION AND CLAIMS (AUG 2009)	212
135 DEAR 970.5229-1 STATE AND LOCAL TAXES (DEC 2000).....	214
136 DEAR 970.5231-4 PREEXISTING CONDITIONS (DEC 2000)—Alternate II (DEC 2000).....	215
137 DEAR 970.5232-1 REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS (DEC 2000)	215
138 DEAR 970.5232-2 PAYMENTS AND ADVANCES (DEC 2000)—Alternate III (DEC 2000).....	215
139 DEAR 970.5232-3 ACCOUNTS, RECORDS AND INSPECTION (DEC 2010)	218
140 DEAR 970.5232-4 OBLIGATION OF FUNDS (DEC 2000).....	220
141 DEAR 970.5232-5 LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (DEC 2000).....	222
142 DEAR 970.5232-6 WORK FOR OTHERS FUNDING AUTHORIZATION (DEC 2000).....	222
143 DEAR 970.5232-7 FINANCIAL MANAGEMENT SYSTEM (DEC 2000).....	223
144 DEAR 970.5232-8 INTEGRATED ACCOUNTING (DEC 2000)	223
145 DEAR 970.5236-1 GOVERNMENT FACILITY SUBCONTRACT APPROVAL (DEC 2000).....	223
146 DEAR 970.5242-1 PENALTIES FOR UNALLOWABLE COSTS (AUG 2009)	223

147 DEAR 970.5243-1 CHANGES (DEC 2000) 224
**148 DEAR 970.5244-1 CONTRACTOR PURCHASING SYSTEM (JAN 2013) (CLASS
DEVIATIONS: AUG 2011, JUN 2013, MAR 2015) (NNSA CLASS DEVIATION
MAY 2016) 225**
149 DEAR 970.5245-1 PROPERTY (JAN 2013)..... 229

I-2 FAR 52.252-4 Alterations in Contract (Apr 1984) 232
**FAR 52.229-10 State of New Mexico Gross Receipts and Compensating Tax (Apr 2003),
as modified by DEAR 970.2904-1(a) 233**
DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (JUL 2005) 233

Full Text FAR Clauses

1. FAR 52.202-1 Definitions (Nov 2013)

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.

(End of clause)

2 FAR 52.203-3 Gratuities (Apr 1984)

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

3 FAR 52.203-5 Covenant Against Contingent Fees (May 2014)

- (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.

4 FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (Sep 2006)

- (a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.
- (b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.
- (c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold.

5 FAR 52.203-7 Anti-Kickback Procedures (May 2014)

- (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) The 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 subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$150,000.

6 FAR 52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (May 2014)

- (a) If the Government receives information that a contractor or a person has violated 41 U.S.C. 2102-2104, Restriction 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.

7 FAR 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (May 2014)

- (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) 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.

8 FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Oct 2010)

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

“Agency” means executive agency as defined in Federal Acquisition Regulation (FAR) 2.101.
“Covered Federal action” means any of the following Federal actions:

- (1) Awarding any Federal contract.
- (2) Making any Federal grant.
- (3) Making any Federal loan.

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

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

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

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

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

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

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

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

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

“Recipient” includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such

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

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

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

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

- (1) The term *appropriated funds* does not include profit or fee from a covered Federal action.
- (2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

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

- (1) Agency and legislative liaison by Contractor employees.
 - (i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.
 - (ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern—
 - (A) The qualities and characteristics (including individual demonstrations) of the person’s products or services, conditions or terms of sale, and service capabilities; or
 - (B) The application or adaptation of the person’s products or services for an agency’s use.

- (iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.
- (2) Professional and technical services.
- (i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
 - (ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
 - (iii) As used in this paragraph (c)(2), “professional and technical services” are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).
 - (iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.
- (d) Disclosure.
- (1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.
 - (2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the

OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) Penalties.

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

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

(g) *Subcontracts.*

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

9 FAR 52.203-13 Contractor Code of Business Ethics and Conduct (Oct 2015)

(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; and
 - (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 internal control system as necessary to reduce the risk of criminal conduct identified through this process.
- (D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.
- (E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.
- (F) 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.

10.1 FAR 52.203-14 Display of Hotline Poster(s) (Oct 2015)

(a) Definition.

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

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

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

Poster(s)	Obtain from
	Department of Energy
	Website: http://ig.energy.gov/hotline.htm

(Contracting Officer shall insert—

(i) Appropriate agency name(s) and/or title of applicable Department of Homeland Security fraud hotline poster); and

(ii) The website(s) or other contact information for obtaining the poster(s).)

(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.

10-2 FAR 203-17 Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights (Apr 2014)

(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.

(End of clause)

10-3 FAR 52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)

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

“Internal confidentiality agreement or statement” means a confidentiality agreement or any other written statement that the contractor requires any of its employees or subcontractors to sign regarding nondisclosure of contractor information, except that it does not include confidentiality agreements arising out of civil litigation or confidentiality agreements that contractor employees or subcontractors sign at the behest of a Federal agency.

“Subcontract” means any contract as defined in subpart 2.1 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 (including a consultant) that furnishes supplies or services to or for a prime contractor or another subcontractor.

(b) The Contractor shall not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

(c) The Contractor shall notify current employees and subcontractors that prohibitions and restrictions of any preexisting internal confidentiality agreements or statements covered by this clause, to the extent that such prohibitions and restrictions are inconsistent with the prohibitions of this clause, are no longer in effect.

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

(e) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015, (Pub. L. 113-235), and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions) use of funds appropriated (or otherwise made available) is prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts under such contracts.

(End of clause)

11 FAR 52.204-4 Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (May 2011)

(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.

12 RESERVED

13-1 FAR 52.204-9 Personal Identity Verification of Contractor Personnel (Jan 2011)

- (a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201.
- (b) The Contractor shall 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.

(End of Clause)

13-2 52.204-13 System for Award Management Maintenance (Jul 2013)

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

“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities, which is used as the identification number for Federal Contractors.

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

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

- (1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, the Contractor 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.
- (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 he 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 DUNS number is maintained with Dun & Bradstreet throughout the life of the contract. The Contractor shall communicate any change to the DUNS number 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 DUNS number does not necessarily require a novation be accomplished. Dun & Bradstreet may be contacted—
 - (i) Via the internet at <http://fedgov.dnb.com/webform> or if the Contractor does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or
 - (ii) If located outside the United States, by contacting the local Dun and Bradstreet office.
- (d) Contractors may obtain additional information on registration and annual confirmation requirements at <https://www.acquisition.gov>.

(End of Clause)

13-3 52.204-21 – BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016)

(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.

(End of clause)

14 FAR 52.208-8 Required Sources for Helium and Helium Usage Data (Apr 2014)

(a) Definitions.

“Bureau of Land Management,” as used in this clause, means the Department of the Interior, Bureau of Land Management, Amarillo Field Office, Helium Operations, located at 801 South Fillmore Street, Suite 500, Amarillo, TX 79101-3545.

“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.

15 FAR 52.209-6 Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Oct 2015)

- (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 debar 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)

16 FAR 52.211-5 Material Requirements (Aug 2000)

- (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.

17 FAR 52.211-15 Defense Priority and Allocation Requirement (Apr 2008)

This is a rated order certified for national defense, emergency preparedness, and energy program use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

18 FAR 52.215-2 Audit and Records -- Negotiation (Oct 2010)–Alternate I (Mar 2009)

- (a) As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor’s plants, or parts of them, engaged in performing the contract.
- (c) *Certified cost or pricing data.* If the Contractor has been required to submit certified cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to—
 - (1) The proposal for the contract, subcontract, or modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;
 - (3) Pricing of the contract, subcontract, or modification; or
 - (4) Performance of the contract, subcontract or modification.
- (d) Comptroller General or Inspector General.
 - (1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, shall have access to and the right to—
 - (i) Examine any of the Contractor’s or any subcontractor’s records that pertain to and involve transactions relating to this contract or a subcontract hereunder; and

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

19 FAR 52.215-8 Order of Precedence -- Uniform Contract Format (Oct 1997)

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

- (a) The Schedule (excluding the specifications).
- (b) Representations and other instructions.
- (c) Contract clauses.
- (d) Other documents, exhibits, and attachments.

- (e) The specifications.

20 FAR 52.215-12 Subcontractor Certified Cost or Pricing Data (Oct 2010)

- (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 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.

21 FAR 52.215-13 Subcontractor Certified Cost or Pricing Data – Modifications (Oct 2010)

- (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.

- (c) 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.
- (d) 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.

22 FAR 52.215-15 Pension Adjustments and Asset Reversions (Oct 2010)

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

23-1 FAR 52.215-17 Waiver of Facilities Capital Cost of Money (Oct 1997)

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

23-2 FAR 52.217-9 Option to Extend the Term of the Contract (Mar 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 10 days before the contract expires; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 15 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 11 years, 3 months.

24 FAR 52.219-8 Utilization of Small Business Concerns (Oct 2014)

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

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

"Service-disabled veteran-owned small business concern"—

(1) Means a small business concern—

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

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

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

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

(1) 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.
- (1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.
 - (2) 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)

(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 contract 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 plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“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.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business concerns, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and with women-owned small business concerns. If the offeror is submitting an individual contract 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 plan shall be included in and made a part of the

resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

- (d) The offeror's subcontracting plan shall include the following:
- (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. 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 (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.
 - (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 contract 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, the System for Award Management (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 plan similar to the 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) Submit the Individual Subcontracting Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with the 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 the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;
 - (iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;
 - (v) Provide its prime contract number, its DUNS number, and the e-mail 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
 - (vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail 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, 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.
- (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 identified as a certified HUBZone small business concern by accessing the SAM database or by contacting SBA.
 - (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, the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.
- (f) A master 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 plan has been approved;

- (2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and
 - (3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.
- (g) 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 plan. When a modification meets the criteria in 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.
- (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.
- (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 prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors 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.
 - (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.
 - (iii) 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 the awarding agency, regardless of the dollar value of the subcontracts.
 - (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 a prime Contractor and/or 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. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.
 - (D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.
 - (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.
 - (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 from which contracts for commercial items were received.
 - (D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(End of Clause)

26 FAR 52.219-16 Liquidated Damages -- Subcontracting Plan (Jan 1999)

- (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 that 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.

27 FAR 52.219-25 RESERVED

28 FAR 52.222-1 Notice to the Government of Labor Disputes (Feb 1997)

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

29 FAR 52.222-3 Convict Labor (Jun 2003)

- (a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.
- (b) The Contractor is not prohibited from employing persons—
 - (1) On parole or probation to work at paid employment during the term of their sentence;
 - (2) Who have been pardoned or who have served their terms; or
 - (3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—
 - (i) The worker is paid or is in an approved work training program on a voluntary basis;
 - (ii) Representatives of local union central bodies or similar labor union organizations have been consulted;
 - (iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;
 - (iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
 - (v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

30 FAR 52.222-4 Contract Work Hours and Safety Standards Act -- Overtime Compensation (May 2014)

- (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;* a prime Contractor and/or 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. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.
- (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 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.

31-1 FAR 52.222-6 Construction Wage Rate Requirements (May 2014)

- (a) Definition.—“Site of the work”—
- (1) Means—
- (i) *The primary site of the work.* The physical place or places where the construction called for in the contract will remain when work on it is completed; and
- (ii) *The secondary site of the work, if any.* Any other site where a significant portion of the building or work is constructed, provided that such site is—
- (A) Located in the United States; and
- (B) Established specifically for the performance of the contract or project;
- (2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—
- (i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and
- (ii) They are adjacent or virtually adjacent to the “primary site of the work” as defined in paragraph (a)(1)(i), or the “secondary site of the work” as defined in paragraph (a)(1)(ii) of this definition;
- (3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.
- (b) (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

- (2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Construction Wage Rate Requirements statute on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.
 - (3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
 - (4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Construction Wage Rate Requirements (Davis-Bacon Act) poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.
- (c) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:
- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
 - (ii) The classification is utilized in the area by the construction industry.
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

- (3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
 - (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - (e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Construction Wage Rate Requirements statute have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

31-2 FAR 52.222-17 Nondisplacement of Qualified Workers (May 2014)

- (a) "Service employee," as used in this clause, means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.
- (b) The Contractor and its subcontractors shall, except as otherwise provided herein, in good faith offer those service employees employed under the predecessor contract whose employment will be terminated as a result of award of this contract or the expiration of the contract under which the service employees were hired, a right of first refusal of employment under this contract in positions for which the service employees are qualified.
 - (1) The Contractor and its subcontractors shall determine the number of service employees necessary for efficient performance of this contract and may elect to employ fewer employees than the predecessor Contractor employed in connection with performance of the work.
 - (2) Except as provided in paragraph (c) of this clause, there shall be no employment opening under this contract, and the Contractor and any subcontractors shall not offer employment under this contract, to any person prior to having complied fully with this obligation.

- (i) The successor Contractor and its subcontractors shall make a bona fide express offer of employment to each service employee as provided herein and shall state the time within which the service employee must accept such offer, but in no case shall the period within which the service employee must accept the offer of employment be less than 10 days.
- (ii) The successor Contractor and its subcontractors shall decide any question concerning a service employee's qualifications based upon the individual's education and employment history, with particular emphasis on the employee's experience on the predecessor contract, and the Contractor may utilize employment screening processes only when such processes are provided for by the contracting agency, are conditions of the service contract, and are consistent with Executive Order 13495.
- (iii) Where the successor Contractor does not initially offer employment to all the predecessor contract service employees, the obligation to offer employment shall continue for 90 days after the successor contractor's first date of performance on the contract.
- (iv) An offer of employment will be presumed to be bona fide even if it is not for a position similar to the one the employee previously held, but is one for which the employee is qualified, and even if it is subject to different employment terms and conditions, including changes to pay or benefits. (See 29 CFR 9.12 for a detailed description of a bona fide offer of employment).

(c)

- (1) Notwithstanding the obligation under paragraph (b) of this clause, the successor Contractor and any subcontractors (i) may employ under this contract any service employee who has worked for the contractor or subcontractor for at least three months immediately preceding the commencement of this contract and who would otherwise face lay-off or discharge, (ii) are not required to offer a right of first refusal to any service employee(s) of the predecessor contractor who are not service employees within the meaning of the Service Contract Labor Standards statute, 41 U.S.C. 6701(3), and (iii) are not required to offer a right of first refusal to any service employee(s) of the predecessor contractor whom the Contractor or any of its subcontractors reasonably believes, based on the particular service employee's past performance, has failed to perform suitably on the job (see 29 CFR 9.12(c) (4) for additional information). The successor Contractor bears the responsibility of demonstrating the appropriateness of claiming any of these exceptions.
- (2) In addition, any Contractor or subcontractor that has been certified by the U.S. Small Business Administration as a HUBZone small business concern must ensure that it complies with the statutory and regulatory requirements of the HUBZone Program (e.g., it must ensure that at least 35 percent of all of its employees reside within a HUBZone). The HUBZone small business Contractor or subcontractor must consider whether it can meet the requirements of this clause and Executive Order 13495 while also ensuring it meets the HUBZone Program's requirements.
- (3) Nothing in this clause shall be construed to permit a Contractor or subcontractor to fail to comply with any provision of any other Executive order or law. For example, the requirements of the HUBZone Program (see FAR subpart 19.13), Executive Order 11246 (Equal Employment Opportunity), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 may conflict, in certain circumstances, with the requirements of Executive Order 13495. All applicable laws and Executive orders must be satisfied in tandem with, and if necessary prior to, the requirements of Executive Order 13495, 29 CFR part 9, and this clause.

(d)

- (1) The Contractor shall, not less than 30 days before completion of the Contractor's performance of services on the contract, furnish the Contracting Officer with a certified list of the names of all service employees working under this contract and its subcontracts at the time the list is submitted. The list shall also contain anniversary dates of employment of each service employee under this contract and its predecessor contracts with either the current or predecessor contractors or their subcontractors. Where changes to the workforce are made after the submission of the certified list described in this paragraph, the Contractor shall, in accordance with paragraph (e) of this clause, not less than 10 days before completion of the services on this contract, furnish the Contracting Officer with an updated certified list of the names of all service employees employed within the last month of contract performance. The updated list shall also contain anniversary dates of employment, and, where applicable, dates of separation of each service employee under the contract and its predecessor contracts with either the current or predecessor Contractors or their subcontractors.
- (2) Immediately upon receipt of the certified service employee list but not before contract award, the contracting officer shall provide the certified service employee list to the successor contractor, and, if requested, to employees of the predecessor contractor or subcontractors or their authorized representatives.
- (3) The Contracting Officer will direct the predecessor Contractor to provide written notice (Appendix B to 29 CFR chapter 9) to service employees of their possible right to an offer of employment with the successor contractor. Where a significant portion of the predecessor Contractor's workforce is not fluent in English, the notice shall be provided in English and the language(s) with which service employees are more familiar. The written notice shall be—
 - (i) Posted in a conspicuous place at the worksite; or
 - (ii) Delivered to the service employees individually. If such delivery is via email, the notification must result in an electronic delivery receipt or some other reliable confirmation that the intended recipient received the notice.

(e)

- (1) If required in accordance with 52.222-41(n), the predecessor Contractor shall, not less than 10 days before completion of this contract, furnish the Contracting Officer a certified list of the names of all service employees working under this contract and its subcontracts during the last month of contract performance. The list shall also contain anniversary dates of employment of each service employee under this contract and its predecessor contracts either with the current or predecessor Contractors or their subcontractors. If there are no changes to the workforce before the predecessor contract is completed, then the predecessor Contractor is not required to submit a revised list 10 days prior to completion of performance and the requirements of 52.222-41(n) are met. When there are changes to the workforce after submission of the 30-day list, the predecessor Contractor shall submit a revised certified list not less than 10 days prior to performance completion.
 - (2) Immediately upon receipt of the certified service employee list but not before contract award, the contracting officer shall provide the certified service employee list to the successor contractor, and if requested, to employees of the predecessor contractor or subcontractors or their authorized representatives.
- (f) The Contractor and subcontractor shall maintain the following records (regardless of format, e.g., paper or electronic) of its compliance with this clause for not less than a period of three years from the date the records were created.

- (1) Copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location, and attendance roster of any service employee meeting(s) at which the offers were extended, a summary of each meeting, a copy of any written notice that may have been distributed, and the names of the service employees from the predecessor contract to whom an offer was made.
 - (2) A copy of any record that forms the basis for any exemption claimed under this part.
 - (3) A copy of the service employee list provided to or received from the contracting agency.
 - (4) An entry on the pay records of the amount of any retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division to each service employee, the period covered by such payment, and the date of payment, and a copy of any receipt form provided by or authorized by the Wage and Hour Division. The Contractor shall also deliver a copy of the receipt to the service employee and file the original, as evidence of payment by the Contractor and receipt by the service employee, with the Administrator or an authorized representative within 10 days after payment is made.
- (g) Disputes concerning the requirements of this clause shall not be subject to the general disputes clause (52.233-1) of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 9. Disputes within the meaning of this clause include disputes between or among any of the following: The Contractor, the contracting agency, the U.S. Department of Labor, and the service employees under the contract or its predecessor contract. The Contracting Officer will refer any service employee who wishes to file a complaint, or ask questions concerning this contract clause, to the: Branch of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Contact email displaced@dol.gov .
- (h) The Contractor shall cooperate in any review or investigation by the Department of Labor into possible violations of the provisions of this clause and shall make such records requested by such official(s) available for inspection, copying, or transcription upon request.
- (i) If it is determined, pursuant to regulations issued by the Secretary of Labor (Secretary), that the Contractor or its subcontractors are not in compliance with the requirements of this clause or any regulation or order of the Secretary, the appropriate sanctions may be imposed and remedies invoked against the Contractor or its subcontractors, as provided in Executive Order 13495, the regulations, and relevant orders of the Secretary, or as otherwise provided by law.
- (j) 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. However, if the Contractor, as a result of such direction, becomes involved in litigation with a subcontractor, or is threatened with such involvement, the Contractor may request that the United States, through the Secretary, enter into such litigation to protect the interests of the United States.
- (k) The Contracting Officer will withhold, or cause to be withheld, from the prime Contractor under this or any other Government contract with the same prime Contractor, such sums as an authorized official of the Department of Labor requests, upon a determination by the Administrator, the Administrative Law Judge, or the Administrative Review Board, that there has been a failure to comply with the terms of this clause and that wages lost as a result of the violations are due to service employees or that other monetary relief is appropriate. If the Contracting Officer or the Administrator, upon final order of the Secretary, finds that the Contractor has failed to provide a list of the names of service employees working under the contract, the Contracting Officer may, in his or her discretion, or upon request by the Administrator, take such action as may be necessary to

cause the suspension of the payment of contract funds until such time as the list is provided to the Contracting Officer.

- (l) Subcontracts. In every subcontract over the simplified acquisition threshold entered into in order to perform services under this contract, the Contractor shall include a provision that ensures—
 - (1) That each subcontractor will honor the requirements of paragraphs (b) through (c) of this clause with respect to the service employees of a predecessor subcontractor or subcontractors working under this contract, as well as of a predecessor Contractor and its subcontractors;
 - (2) That the subcontractor will provide the Contractor with the information about the service employees of the subcontractor needed by the Contractor to comply with paragraphs (d) and (e) of this clause; and
 - (3) The recordkeeping requirements of paragraph (f) of this clause.

(End of clause)

32 FAR 52.222-21 Prohibition of Segregated Facilities (Apr 2015)

- (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 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 the 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.

33 FAR 52.222-26 Equal Opportunity (Apr 2015)

- (a) *Definition.* 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 .

“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, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
- (2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—
 - (i) Employment;
 - (ii) Upgrading;
 - (iii) Demotion;
 - (iv) Transfer;
 - (v) Recruitment or recruitment advertising;
 - (vi) Layoff or termination;
 - (vii) Rates of pay or other forms of compensation; and
 - (viii) Selection for training, including apprenticeship.
- (3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

- (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
 - (7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
 - (8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the (OFCCP) for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
 - (9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, in the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
 - (10) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
 - (11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

34 FAR 52.222-29 Notification of Visa Denial (April 2015)

- (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 .

“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) 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..

35 FAR 52.222-35 Equal Opportunity for Veterans (Oct 2015)

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

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

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

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

36 FAR 52.222-36 Equal Opportunity for Workers With Disabilities (Jul 2014)

(a) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60.741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

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

37 FAR 52.222-37 Employment Reports on Veterans (Feb 2016)

- (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 Reporting” and “Filing Your VETS-4212 Report” at <http://www.dol.gov/vets/vets4212.htm>).
- (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.

38 FAR 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)

- (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 website 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 website that contains the full text of the poster. The link to the Department's website, 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.

39 FAR 52.222-50 Combating Trafficking in Persons (Mar 2015)

(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.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“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.

“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; or
- (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 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 work, 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 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;
- (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 Web site 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.

40-1 FAR 52.222-54 Employment Eligibility Verification (Oct 2015)

(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)

40-2 FAR 52.222-55 Minimum Wages Under Executive Order 13658 (Dec 2015)

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

“United States” means the 50 states and the District of Columbia.

“Worker” –

- (1) Means any person engaged in performing work on, or in connection with, a contract covered by Executive Order 13658, and
 - (i) Whose wages under such contract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV),
 - (ii) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541,
 - (iii) Regardless of the contractual relationship alleged to exist between the individual and the employer.
- (2) Includes workers performing on, or in connection with, the contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).
- (3) Also includes any person working on, or in connection with, the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor’s Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(b) Executive Order Minimum Wage rate.

- (1) The Contractor shall pay to workers, while performing in the United States, and performing on, or in connection with, this contract, a minimum hourly wage rate of \$10.10 per hour beginning January 1, 2015.
- (2) The Contractor shall adjust the minimum wage paid, if necessary, beginning January 1, 2016, and annually thereafter, to meet the applicable annual E.O. minimum wage. The Administrator of the Department of Labor’s Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on www.wdol.gov (or any successor Web site) and a general notice on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute that will provide information on the E.O. minimum wage and how to obtain annual updates. The applicable published E.O. minimum wage is incorporated by reference into this contract.
- (3)

- (i) The Contractor may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only if labor costs increase as a result of an increase in the annual E.O. minimum wage, and for associated labor costs and relevant subcontract costs. Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.
 - (ii) Subcontractors may be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). Contractors shall consider any subcontractor requests for such price adjustment.
 - (iii) The Contracting Officer will not adjust the contract price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.
- (4) The Contractor warrants that the prices in this contract do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.
 - (5) A pay period under this clause may not be longer than semi-monthly, but may be shorter to comply with any applicable law or other requirement under this contract establishing a shorter pay period. Workers shall be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued.
 - (6) The Contractor shall pay, unconditionally to each worker, all wages due free and clear without subsequent rebate or kickback. The Contractor may make deductions that reduce a worker's wages below the E.O. minimum wage rate only if done in accordance with 29 CFR 10.23, Deductions.
 - (7) The Contractor shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.
 - (8) Nothing in this clause shall excuse the Contractor from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the E.O. minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.
 - (9) The Contractor shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.
 - (10) The Contractor shall follow the policies and procedures in 29 CFR 10.24(b) and 10.28 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

- (c) (1) This clause applies to workers as defined in paragraph (a). As provided in that definition—
 - (i) Workers are covered regardless of the contractual relationship alleged to exist between the contractor or subcontractor and the worker;
 - (ii) Workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) are covered; and
 - (iii) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor’s Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.
- (2) This clause does not apply to—
 - (i) Fair Labor Standards Act (FLSA)-covered individuals performing in connection with contracts covered by the E.O., *i.e.* those individuals who perform duties necessary to the performance of the contract, but who are not directly engaged in performing the specific work called for by the contract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts;
 - (ii) Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to—
 - (A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a).
 - (B) Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b).
 - (C) Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. 213(a)(1) and 29 CFR part 541).
- (d) *Notice.* The Contractor shall notify all workers performing work on, or in connection with, this contract of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the Contractor shall post notice, utilizing the poster provided by the Administrator, which can be obtained at www.dol.gov/whd/govcontracts, in a prominent and accessible place at the worksite. Contractors that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.
- (e) Payroll Records.

- (1) The Contractor shall make and maintain records, for three years after completion of the work, containing the following information for each worker:
 - (i) Name, address, and social security number;
 - (ii) The worker's occupation(s) or classification(s);
 - (iii) The rate or rates of wages paid;
 - (iv) The number of daily and weekly hours worked by each worker;
 - (v) Any deductions made; and
 - (vi) Total wages paid.
- (2) The Contractor shall make records pursuant to paragraph (e)(1) of this clause available for inspection and transcription by authorized representatives of the Administrator. The Contractor shall also make such records available upon request of the Contracting Officer.
- (3) The Contractor shall make a copy of the contract available, as applicable, for inspection or transcription by authorized representatives of the Administrator.
- (4) Failure to comply with this paragraph (e) shall be a violation of 29 CFR 10.26 and this contract. Upon direction of the Administrator or upon the Contracting Officer's own action, payment shall be withheld until such time as the noncompliance is corrected.
- (5) Nothing in this clause limits or otherwise modifies the Contractor's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.
- (f) *Access.* The Contractor shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.
- (g) *Withholding.* The Contracting Officer, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the Contractor under this or any other Federal contract with the same Contractor, sufficient to pay workers the full amount of wages required by this clause.
- (h) *Disputes.* Department of Labor has set forth in 29 CFR 10.51, Disputes concerning contractor compliance, the procedures for resolving disputes concerning a contractor's compliance with Department of Labor regulations at 29 CFR part 10. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. These disputes include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the workers or their representatives.
- (i) *Antiretaliation.* The Contractor shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.

- (j) *Subcontractor compliance.* The Contractor is responsible for subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due subcontractor workers.
- (k) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (k) in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

41 FAR 52.223-2 Affirmative Procurement of Bio-based Products Under Service and Construction Contracts (Sep 2013)

- (a) In the performance of this contract, the contractor shall make maximum use of bio based 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 not later than—
 - (i) October 31 of each year during contract performance; and
 - (ii) At the end of contract performance.

(End of clause)

**42 FAR 52.223-3 Hazardous Material Identification and Material Safety Data (Jan 1997)—
Alternate I (Jul 1995)**

- (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.

Material	Identification No.
<i>(If none, insert “None”)</i>	

- (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 nonresponsible 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 subparagraph (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.

43 FAR 52.223-5 Pollution Prevention and Right-to-Know Information (May 2011) – Alternate I (May 2011) – Alternate II (May 2011)

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

“Toxic chemical” means a chemical or chemical category in 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.
- (8) The facility compliance audits as described in section 3(c) of E.O. 13423.

44 FAR 52.223-6 Drug-Free Workplace (May 2001)

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

“Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11–1308.15.

“Conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

“Drug-free workplace” means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Employee” means an employee of a Contractor directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

“Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

- (b) The Contractor, if other than an individual, shall—within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration—
- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - (2) Establish an ongoing drug-free awareness program to inform such employees about—

- (i) The dangers of drug abuse in the workplace;
 - (ii) The Contractor's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;
- (4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will –
- (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;
- (5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
- (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.
- (c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
- (d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

45 FAR 52.223-7 Notice of Radioactive Materials (Jan 1997)

- (a) The Contractor shall notify the Contracting Officer or designee, in writing, thirty (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).

* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions. See FAR 23.601(d).

- (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.

46 FAR 52.223-9 Estimate of Percentage of Recovered Material Content For EPA Designated Items (May 2008)

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

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

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

- (b) The Contractor, on completion of this contract, shall—
 - (1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of postconsumer material content; and
 - (2) Submit this estimate to the contracting officer.

47 FAR 52.223-10 Waste Reduction Program (May 2011)

- (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).

48 FAR 52.223-11 Ozone-Depleting Substances (May 2001)

- (a) *Definition.* “*Ozone-depleting substance,*” as used in this clause, 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 which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) 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).

49 FAR 52.223-12 Refrigeration Equipment and Air Conditioners (May 1995)

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.

50 FAR 52.223-14 RESERVED

51 FAR 52.223-15 Energy Efficiency in Energy-Consuming Products (Dec 2007)

- (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>; and
 - (2) FEMP at http://www1.eere.energy.gov/femp/procurement/eep_requirements.html.

52 FAR 52.223-16 Acquisition of EPEAT®-Registered Personal Computer Products (Oct 2015)

(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 1394-2008TM, 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/PEAT.

53 (End of clause) FAR 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts (May 2008)

- (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>.

54 FAR 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011)

(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
 - (ii) 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.

55 FAR 52.223-19 Compliance with Environmental Management Systems (May 2011)

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.

56 FAR 52.224-1 Privacy Act Notification (Apr 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C.552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

57-1 FAR 52.224-2 Privacy Act (Apr 1984)

- (a) The Contractor agrees to—
 - (1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies—
 - (i) The systems of records; and
 - (ii) The design, development, or operation work that the contractor is to perform;
 - (2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the 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.

57-2 FAR 52.224-3 Privacy Training (Jan 2017)

(a) *Definition.* As used in this clause, “personally identifiable information means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual. (See Office of Management and Budget (OMB) Circular A-130, Managing Federal Information as a Strategic Resource).

(b) The Contractor shall ensure that initial privacy training, and annual privacy training thereafter, is completed by contractor employees who--

(1) Have access to a system of records;

(2) Create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information on behalf of an agency; or

(3) Design, develop, maintain, or operate a system of records (see also FAR subpart 24.1 and 39.105).

(c)

(1) Privacy training shall address the key elements necessary for ensuring the safeguarding of personally identifiable information or a system of records. The training shall be role-based, provide foundational as well as more advanced levels of training, and have measures in place to test the knowledge level of users. At a minimum, the privacy training shall cover--

(i) The provisions of the Privacy Act of 1974 (5 U.S.C. 552a), including penalties for violations of the Act;

(ii) The appropriate handling and safeguarding of personally identifiable information;

(iii) The authorized and official use of a system of records or any other personally identifiable information;

(iv) The restriction on the use of unauthorized equipment to create, collect, use, process, store, maintain, disseminate, disclose, dispose or otherwise access personally identifiable information;

(v) The prohibition against the unauthorized use of a system of records or unauthorized disclosure, access, handling, or use of personally identifiable information; and

(vi) The procedures to be followed in the event of a suspected or confirmed breach of a system of records or the unauthorized disclosure, access, handling, or use of personally identifiable information (see OMB guidance for Preparing for and Responding to a Breach of Personally Identifiable Information).

(2) Completion of an agency-developed or agency-conducted training course shall be deemed to satisfy these elements.

(d) The Contractor shall maintain and, upon request, provide documentation of completion of privacy training to the Contracting Officer.

(e) The Contractor shall not allow any employee access to a system of records, or permit any employee to create, collect, use, process, store, maintain, disseminate, disclose, dispose or otherwise handle

personally identifiable information, or to design, develop, maintain, or operate a system of records unless the employee has completed privacy training, as required by this clause.

(f) The substance of this clause, including this paragraph (f), shall be included in all subcontracts under this contract, when subcontractor employees will—

(1) Have access to a system of records;

(2) Create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or

(3) Design, develop, maintain, or operate a system of records.

(End of clause)

58 FAR 52.225-1 Buy American – Supplies (May 2014)

(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—

(1) 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

(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 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 Act Certificate.”

59 FAR 52.225-8 Duty-Free Entry (Oct 2010)

- (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.

60 FAR 52.225-9 Buy American – Construction Materials (May 2014)

(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 the 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 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:
_____ [*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 Act 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
 - (iii) 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 Act.
- (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 Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price

of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

- (3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.
- (d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) *
<i>Item 1</i>			
Foreign construction material			
Domestic construction material			
<i>Item 2</i>			
Foreign construction material			
Domestic construction material			

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

[Include other applicable supporting information.]

*[*Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*

61 FAR 52.225-13 Restriction on Certain Foreign Purchases (Jun 2008)

- (a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC’s implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.
- (b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC’s List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn/>. More information about these restrictions, as well as updates, is available in the OFAC’s regulations at 31 CFR chapter V and/or on OFAC’s website at <http://www.treas.gov/offices/enforcement/ofac>.
- (c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

62 FAR 52.229-10 State of New Mexico Gross Receipts and Compensating Tax (Apr 2003) as modified by DEAR 970.2904-1(a)

- (a) Within thirty (30) days after award of this contract, the Contractor shall advise the State of New Mexico of this contract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the contract number.
- (b) The Contractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the contract fee and costs paid for performance of this contract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Contractor or its subcontractors will be determined in accordance with the Payments and Advances clause of this contract except as provided in paragraph (d) of this clause.
- (c) The Contractor shall submit applications for Nontaxable Transaction Certificates, Form CSR-3C, to the:

State of New Mexico Taxation and Revenue Dept.
Revenue Division
PO Box 630
Santa Fe, New Mexico 87509

When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Contractor shall use these certificates strictly in accordance with this contract, and the agreement between the United States Department of Energy and the New Mexico Taxation and Revenue Department.

- (d) The Contractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Contractor for use in the performance of this contract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipt taxes and those taxes, which are then passed on to the Contractor, shall not be reimbursable as an allowable cost by the Government.
- (e) The Contractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.
- (f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the contractor only if such property is not used for Federal purposes.
- (g) The U.S. Department of Energy may receive information regarding the Contractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the U.S. Department of Energy, may participate in any matters or proceedings pertaining to this clause or the above-mentioned Agreement. This shall not preclude the Contractor from having its own representative nor does it obligate the U.S. Department of Energy to represent its Contractor.

- (h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401-4(b)(1) through (3) of the Federal Acquisition Regulation, 48 CFR Part 29.
- (i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

63 FAR 52.230-2 Cost Accounting Standards (Oct 2015)

- (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.

64 FAR 52.230-6 Administration of Cost Accounting Standards (Jun 2010)

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);
- (4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (FAR Subpart 16.5); and
- (5) 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 becomes 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.

- (b) 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 non-compliances 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 non-compliances 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.

65 FAR 52.232-17 Interest (May 2014)

- (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.
- (g) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

66 FAR 52.232-18 Availability of Funds (Apr 1984)

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

67-1 FAR 52.232-24 Prohibition of Assignment of Claims (May 2014)

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.

67-2 FAR 52.232-40 Providing Accelerated Payments To Small Business Subcontractors (Dec 2013)

- (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.

(End of clause)

68 FAR 52.233-1 Disputes (May 2014) – Alternate I (Dec 1991)

- (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 duly authorized to certify the claim on behalf of the Contractor."
 - (3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.
- (e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- (f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in 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.

69 FAR 52.233-3 Protest after Award (Aug 1996)—Alternate I (Jun 1985)

- (a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either—
 - (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Termination clause of this contract.
- (b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, 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 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

- (f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

70 FAR 52.233-4 Applicable Law for Breach Of Contract Claim (Oct 2004)

United States law will apply to resolve any claim of breach of this contract.

71 FAR 52.234-4 Earned Value Management System (May 2014)

- (a) The Contractor shall use an earned value management system (EVMS) that has been determined by the Cognizant Federal Agency (CFA) to be compliant with the guidelines in ANSI/EIA Standard - 748 (current version at the time of award) to manage this contract. If the Contractor's current EVMS has not been determined compliant at the time of award, see paragraph (b) of this clause. The Contractor shall submit reports in accordance with the requirements of this contract.
- (b) If, at the time of award, the Contractor's EVM System has not been determined by the CFA as complying with EVMS guidelines or the Contractor does not have an existing cost/schedule control system that is compliant with the guidelines in ANSI/EIA Standard - 748 (current version at time of award), the Contractor shall—
 - (1) Apply the current system to the contract; and
 - (2) Take necessary actions to meet the milestones in the Contractor's EVMS plan approved by the Contracting Officer.
- (c) The Government will conduct an Integrated Baseline Review (IBR). If a pre-award IBR has not been conducted, a post award IBR shall be conducted as early as practicable after contract award.
- (d) The Contracting Officer may require an IBR at—
 - (1) Exercise of significant options; or
 - (2) Incorporation of major modifications.
- (e) Unless a waiver is granted by the CFA, Contractor proposed EVMS changes require approval of the CFA prior to implementation. The CFA will advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the CFA, the Contractor shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.
- (f) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or a duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS conforms, and continues to conform, with the performance criteria referenced in paragraph (a) of this clause.

- (g) The Contractor shall require the subcontractors specified below to comply with the requirements of this clause: [Insert list of applicable subcontractors.]

72 FAR 52.237-2 Protection of Government Buildings, Equipment, and Vegetation (Apr 1984)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

73 FAR 52.237-3 Continuity of Services (Jan 1991)

- (a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to—

- (1) Furnish phase-in training; and
- (2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

- (b) The Contractor shall, upon the Contracting Officer's written notice,

- (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and
- (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required.

The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

- (c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct 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.

74 FAR 52.242-1 Notice of Intent to Disallow Costs (Apr 1984)

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

75 FAR 52.242-13 Bankruptcy (Jul 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

76 FAR 52.244-5 Competition in Subcontracting (Dec 1996)

- (a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.
- (b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

77 FAR 52.244-6 Subcontracts for Commercial Items (Jan 2017)

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

“Commercial item and commercially available off-the-shelf item” have the meanings contained Federal Acquisition Regulation 2.101, Definitions.

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

- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its

subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)

(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (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.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017).

(iv) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (Jun 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 (Nov 2016) (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 (Sep 2016) (E.O. 11246).

(viii) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212(a));

(ix) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

(x) 52.222-37, Employments 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.

(xii)

(A) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O. 13627).

(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) (Jan 2017), 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) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause 52.222-62.

(xvii)

(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 flow down is required in accordance with 52.224-3(f) and the agency specifies that only its agency-provided training is acceptable.

(xviii) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(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)

78 FAR 52.247-1 Commercial Bill of Lading Notations (Feb 2006)

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

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

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

Transportation is for the _____ [*name the specific agency*] 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 _____ [*name the specific agency*] 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. _____ . This may be confirmed by contacting _____ [*Name and address of the contract administration office listed in the contract*].

79 FAR 52.247-63 Preference for U.S.-Flag Air Carriers (Jun 2003)

- (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.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- (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 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 under this contract that may involve international air transportation.

80 FAR 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006)

- (a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. Appx 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 or 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.

81 FAR 52.247-67 Submission of Transportation Documents for Audit (Feb 2006)

- (a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid –
 - (1) By the Contractor under a cost-reimbursement contract; and
 - (2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.
- (b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding \$100. Bills under \$100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.
- (c) Contractors shall submit the above referenced transportation documents to—the contracting officer.

82 FAR 52.249-6 Termination (Cost-Reimbursement) (May 2004)

- (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.

83 FAR 52.249-14 Excusable Delays (Apr 1984)

- (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.

84 FAR 52.250-1 Indemnification Under Public Law 85-804 (Apr 1984)—Alternate I (Apr 1984) (DEVIATION)

- (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 at 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 the 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 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 Availability of Funds or Obligation of Funds clause.
- (j) The term "a risk defined in this contract as unusually hazardous or nuclear" means the risk of legal liability to third parties (including legal costs as defined in paragraph (jj) of section 11 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2014(jj), notwithstanding the fact that the claim or suit may not arise under section 170 of said Act, (42 U.S.C. §2210) arising from actions or inactions in the course of the following work performed by the Contractor under the Contract:
- (1) Participation in:

- (A) DOE's Nuclear Emergency Search Team ("NEST") outside the United States,
- (B) DOE's Accident Response Group ("ARC") outside the United States, or
- (C) DOE's Crisis Response Team ("CRT") outside the United States,

to the extent participation in activities described in subparagraph (A), (B) or (C) above involves nuclear emergency response activities involving real or suspected nuclear weapons, nuclear weapons components, or nuclear materials which can be readily utilized either (1) for the production or the fabrication of nuclear weapons without substantial further effort, or (2) for intentional widespread contamination or dispersal of harmful nuclear materials, whether or not such real or suspected weapons, components, or harmful nuclear materials are owned by the United States; and

- (2) Activities pertaining to non-proliferation, emergency response, antiterrorism activities, or critical national security activities that involve the use, detection, identification, assessment, control, containment, dismantlement, characterization, packaging, transportation, movement, storage, or disposal of nuclear, radiological, chemical, biological, or explosive materials, facilities or devices, provided such activities are specifically requested or approved, in writing, by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or the Under Secretary of Energy for Nuclear Security, and further provided that the request or approval specifically identifies the particular requested or approved activity and makes the indemnity provided by this clause applicable to that particular activity because it involves extraordinary risks.
- (k) This clause provides indemnification for the unusually hazardous or nuclear risks defined herein which are not covered by the Price Anderson Act (section 170d of the Atomic Energy Act of 1954, as amended 42 U.S.C. §2210(d) or where the indemnification provided by the Price Anderson Act is limited by the restriction on public liability imposed by section 170e of the Atomic Energy Act of 1954, as amended, (42 U.S.C. §2210(e)) to an amount which is not sufficient to provide complete indemnification for the legal liability to which the Contractor is exposed.
- (l) Additional definitions applicable to this clause.
 - (1) the term "Contractor" except as used in paragraphs (a) and (e) means
 - (i) National Security Technologies, LLC, and
 - (ii) National Security Technologies LLC's members: Northrop Grumman Information Technology, Inc., AECOM Government Services, Inc., CH2M Hill Constructors, Inc., and Nuclear Fuel Services, Inc., including, if applicable, the ultimate parent companies and the affiliates of each, and
 - (iii) Employees, officers, and directors of any of the foregoing named or threatened to be named as defendants in lawsuits or litigation threatened or initiated by third parties which seek to impose or establish, or which could result in, a risk which is

defined in this contract as unusually hazardous or nuclear, on account of actions or inactions of National Security Technologies, LLC, or on account of actions or inactions undertaken by the entities or individuals identified in subparagraph (a), (b), or (c) for, and on behalf of, or with respect to, National Security Technologies, LLC, under this contract;

- (2) the term “Contractor” as used in paragraphs (a) and (e) means National Security Technologies, LLC;
- (3) the term “Contractor’s business” as used in this clause means the management and operation of the Government’s facilities at the Nevada Test Site and satellite facilities for the Department of Energy under this contract;
- (4) the terms “Contractor’s operations at any one plant or separate location in which this contract is being performed” and “a separate and complete major industrial operation in connection with the performance of this contract” as used in this clause means the Government facilities located at Nevada Test Site and satellite facilities for the Department of Energy under this contract;
- (5) the term “nuclear materials” as used in this clause means source, special nuclear, or byproduct materials as those terms are defined in Section 11 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2014;
- (6) the term “agency head” as used in this clause means the Secretary of Energy; and
- (7) the term “affiliate” as used in this clause means the member companies of National Security Technologies, LLC (Northrop Grumman Information Technology, Inc., AECOM Government Services, Inc., CH2M Hill Constructors, Inc., and Nuclear Fuel Services, Inc., and, if applicable, the parent companies of each including the ultimate parent company of each) as well as companies, other than National Security Technologies, LLC, that directly or indirectly, are owned or otherwise controlled by the member companies of National Security Technologies, LLC.

85 FAR 52.251-1 Government Supply Sources (Apr 2012)

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 at FAR [52.245-1](#), Government Property, apply to all property acquired under such authorization

86 FAR 52.251-2 Interagency Fleet Management System Vehicles and Related Services (Jan 1991)

The Contracting Officer may issue the Contractor an authorization to obtain interagency fleet management system (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.

87 FAR 52.252-6 Authorized Deviations in Clauses (Apr 1984)

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

88 FAR 52.253-1 Computer Generated Forms (Jan 1991)

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

Full Text DEAR Clauses**89 DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)**

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

90 DEAR 952.204-2 SECURITY (OCT 2013) DEVIATION

(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 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) (vi) The Contractor must maintain a record of information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization. Upon request only, the following information will be furnished to the head of the cognizant local DOE Security Office.
- A. The date(s) each Review was conducted;
 - B. Each entity that provided information concerning the individual;
 - C. A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information collected during the review;
 - D. A certification that all information collected during the review was reviewed and evaluated in accordance with the Contractor's personnel policies; and
 - E. The results of the test for illegal drugs.

(i) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794).

(j) *Foreign Ownership, Control, or Influence.* (1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, *Certificate Pertaining to Foreign Interests*, executed prior to award of this contract. 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. 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.

(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 48 CFR 952.204-73, Facility Clearance, and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, Subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean subcontractor and the term "contract" shall mean subcontract.

91 DEAR 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997)

In the performance of work under this contract, the contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders). The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

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

classification, the contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.

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

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

92 DEAR 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS (MAR 2011)

- (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.

93 DEAR 952.204-75 PUBLIC AFFAIRS (DEC 2000)

- (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 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.

94 DEAR 952.204-77 COMPUTER SECURITY (AUG 2006)

- (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 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.

95 DEAR 952.208-7 TAGGING OF LEASED VEHICLES (APR 1984)

- (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.

**96 DEAR 952.209-7 ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009)
ALTERNATE I (Undated)**

- (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 (Contracting Officer see 48 CFR 909.507-2 and enter specific term) 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.
- (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.

97 DEAR 952.211-71 PRIORITIES AND ALLOCATIONS (ATOMIC ENERGY) (APR 2008)

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.

98 DEAR 952.215-70 KEY PERSONNEL (DEC 2000)

- (a) The personnel listed below or elsewhere in this contract (see Contract Section J Appendix entitled “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.

99 DEAR 952.217-70 ACQUISITION OF REAL PROPERTY (MAR 2011)

- (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.

100 DEAR 952.219-70 DOE MENTOR-PROTÉGÉ PROGRAM (MAY 2000)

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist 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. If the contract resulting from this solicitation is awarded on a cost-plus-award fee basis, the contractor’s performance as a Mentor may be evaluated as part of the award fee plan. Mentor and Protégé firms will develop and submit “lessons learned” evaluations to DOE at the conclusion of the

contract. Any DOE contractor that is interested in becoming a Mentor should refer to the applicable regulations at 48 CFR 919.70 and should contact the Department of Energy's Office of Small and Disadvantaged Business Utilization.

101 DEAR 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984)

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by DOE and shall be preserved by the contractor until disposal is authorized by DOE or at the option of the contractor delivered to DOE upon completion or termination of the contract. If the contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

102 DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)

- (a) Definition.

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

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

103 DEAR 952.235-71 RESEARCH MISCONDUCT (JUL 2005)

- (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, and 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 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.

104 DEAR 952.247-70 FOREIGN TRAVEL (JUN 2010)

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

105 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (OCT 2005), as modified by DOE Acquisition Letter 2005-15

- (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 therefor are either payable or required to be provided under any workmen’s compensation or occupational disease law;
- (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
- (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and

- (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) *Notification and litigation of claims.* The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and
- (2) appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- (g) *Continuity of DOE obligations.* The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.
- (h) *Effect of other clauses.* The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) *Civil penalties.* The contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 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.
- (l) *Effective Date.* This contract was awarded on or after August 8, 2005 and at contract award contained the clause at DEAR 952.250-70 (JUNE 1996) or prior version. That clause has been deleted and replaced with this clause. The Price-Anderson Amendments Act of 2005, described by this clause, control the indemnity for any nuclear incident that occurred on or after August 8, 2005. The Contractor's liability for civil penalties for violations of the Atomic Energy Act of 1954 under this contract is described by paragraph (i) of this clause.

106 DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (AUG 2009)

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

OFFICIAL AGENCY LETTERHEAD

TO: Participating Vendor

SUBJECT: OFFICIAL TRAVEL OF GOVERNMENT CONTRACTOR

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

SIGNATURE, Title and telephone number of Contracting Officer

107 DEAR 970.5203-1 MANAGEMENT CONTROLS (JUN 2007)

- (a) (1) The Contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted including consideration of outsourcing of functions by management to reasonably ensure that: the mission and functions assigned to the Contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the Contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely.
- (2) The systems of controls employed by the Contractor shall be documented and satisfactory to DOE.
- (3) Such systems shall be an integral part of the Contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility.
- (4) The Contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively. Annually, or at other intervals directed by the Contracting Officer, the Contractor shall supply to the Contracting Officer copies of the reports reflecting the status of recommendations resulting from management audits performed by its internal audit activity and any other audit organization. This requirement may be satisfied in part by the reports required under paragraph (i) of 48 CFR 970.5232-3, Accounts, records, and inspection.

- (b) The Contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

108 DEAR 970.5203-2 PERFORMANCE IMPROVEMENT AND COLLABORATION (MAY 2006)

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

109 DEAR 970.5203-3 CONTRACTOR'S ORGANIZATION (DEC 2000) (DEVIATION)

- (a) Organization chart. As promptly as possible after the execution of this contract, the contractor shall furnish to the contracting officer (1) a chart showing the names, duties, and organization of key personnel (see 48 CFR 952.215-70) to be employed in connection with the work, and shall furnish supplemental information to reflect any changes as they occur; and, (2) a chart showing the name and organization of the Contractor's Parent Organization's responsible official for administering the Contractor's Parent Organization's Oversight Plan, 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. For purposes of this contract, the contractor's General Manager is the resident supervisory representative of the contractor.

- (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 Administrator of the NNSA or 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. Furthermore, nothing contained in this paragraph (c) shall in any way impair the statutory or contractual collective bargaining rights of union-represented contractor employees.
- (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.
- (e) Nothing in this clause or its implementation is intended to conflict with 42 U.S.C. §7274p, or to otherwise affect the scientific integrity of persons required to provide independent technical judgments to provide the President or the Congress assurances on the safety, security, reliability, or effectiveness of the US nuclear weapons stockpile.

110 DEAR 970.5204-1 COUNTERINTELLIGENCE (DEC 2010)

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

111 DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000)

- (a) In performing work under this contract, the Contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations),

unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and Regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the Contractor to comply with such law or regulation pursuant to this paragraph.

- (b) In performing work under this contract, the Contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in paragraph (d) of this clause, the Contracting Officer may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the Contracting Officer shall notify the Contractor in writing of the Department's intent to revise List B and provide the Contractor with the opportunity to assess the effect of the Contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the Contracting Officer's notice, the Contractor shall advise the Contracting Officer in writing of the potential impact of the Contractor's compliance with the revised list. Based on the information provided by the Contractor and any other information available, the Contracting Officer shall decide whether to revise List B and so advise the Contractor not later than 30 days prior to the effective date of the revision of List B. The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of List B pursuant to the clause of this contract entitled, "Changes."
- (c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under the clause entitled "Integration of Environment, Safety, and Health into Work Planning and Execution." When such a process is used, the set of tailored (ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the Contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.
- (d) Except as otherwise directed by the Contracting Officer, the Contractor shall procure all necessary permits or licenses required for the performance of work under this contract.
- (e) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.

112 DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (OCT 2014) (DEVIATION)

- (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.

(End of Clause)

113 DEAR 970.5208-1 PRINTING (DEC 2000)

- (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, plate making, 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).

114 DEAR 970.5211-1 WORK AUTHORIZATION (MAY 2007)

- (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.

115 DEAR 970.5215-3 CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES—FACILITY MANAGEMENT CONTRACTS (AUG 2009) ALTERNATE II (AUG 2009) (NNSA CLASS DEVIATION MAY 2016)

(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 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% nor greater than 100% 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% nor greater than 25% for a second degree performance failure, and up to 10% 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, Accident Investigations, or its successor).
 - (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, Accident Investigations, or its successor).
 - (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 232.2, or its successor, requirements; or internal oversight of DOE Order 440.1B, or its successor, 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)

116 DEAR 970.5215-4 COST REDUCTION (NNSA CLASS DEVIATION) (MAR 2011)

- (a) General. It is the Department of Energy's (DOE'S) / National Nuclear Security Administration's (NNSA) intent to have its facilities and laboratories operated in an efficient and effective manner. To this end, the Contractor shall assess its operations and identify areas where cost reductions would bring cost efficiency to operations without adversely affecting the level of performance required by the contract. The Contractor, to the maximum extent practical, shall identify areas where cost reductions may be effected, and develop and

submit Cost Reduction Proposals (CRPs) to the Contracting Officer. If accepted, the Contractor may share in any shared net savings from accepted CRPs in accordance with paragraph (h) of this clause.

(b) Definitions.

Administrative cost is the Contractor cost of developing and administering the CRP.

Development cost is the Contractor cost of up-front planning, engineering, prototyping, and testing of a design, process, or method.

DOE/NNSA cost is the Government cost incurred implementing and validating the CRP.

Implementation cost is the Contractor cost of tooling, facilities, documentation, etc., required to effect a design, process, or method change once it has been tested and approved.

Hard savings means savings that directly reduce the overall cost of operations for the negotiated period of savings. Examples of hard savings include:

- (i) Permanently eliminating or reducing recurring costs through innovative product designs, or process improvements;
- (ii) Supply chain management activities resulting in actual savings (as opposed to potential or sourcing savings);
- (iii) Integration of life cycle approaches for the design and development of systems that minimize costs (e.g. experimental, maintenance and operations);
- (iv) Reducing direct or indirect material or labor costs;
- (v) Reducing inventory levels of product or material, or reducing the cost of carrying the same levels;
- (vi) Reducing utility or natural resource consumption; or
- (vii) Reducing or eliminating scrap dollars/rates.

Net Savings means the difference between the estimated cost of performing an effort as originally planned and the actual allowable cost of performing that same effort when implementing a Government approved CRP along with any Contractor development costs, DOE/NNSA cost, implementation costs, and administrative costs associated with the CRP.

Soft Savings means:

- (i) savings that cannot be demonstrated to reduce the bottom line operating costs including, for example, labor efficiency improvements that increase productivity but do not reduce total hours worked;

- (ii) savings that are intangible and consequently difficult to measure, for example, a wellness plan that is intended to reduce absenteeism, turnover or insurance costs; or
- (iii) cost avoidances that cannot be demonstrated to lower cost of products/services based on a comparison against historical results, for example, slowing the rate of a cost increase.

(c) Consideration on Hard Savings

The Government's share of savings shall represent "hard savings" available for reprioritization by the DOE/NNSA. Proposed savings that will not be considered creditable by the Contracting Officer will include:

- (1) Savings resulting from formal or informal NNSA direction or changes in mission, work scope, or routine Contractor adjustments due to budget changes;
- (2) Underruns resulting from anything other than a Contractor efficiency improvement, including but not limited to additional NNSA funding, shifting of work scope to a future fiscal year, (e.g. moving upgrades to facilities or infrastructure to out years with no evidence of savings or computer buys that are routinely purchased on a 3 year bases are deferred for an additional two years) deferred maintenance, re-categorizing direct/indirect costs, or increases in the direct allocation bases;
- (3) Site office initiatives, direction, work scope changes, mission changes, or reorganization, unless the Contractor can demonstrate a significant role in achieving savings resulting from the site office actions;
- (4) Savings that have a negative impact on any existing Contract requirements such as scope, safety, or security;
- (5) Soft savings; and
- (6) Savings that have been credited elsewhere under this contract.

(d) Procedure for submission of CRPs.

CRPs submitted by the Contractor shall contain, at a minimum, the following:

- (1) Current Method (Baseline)-A verifiable description of the current scope of work, cost, and schedule to be impacted by the initiative, and supporting documentation.
- (2) New Method (New Proposed Baseline)-A verifiable description of the new scope of work, cost, and schedule, how the initiative will be accomplished, and supporting documentation.
- (3) Feasibility Assessment-A description and evaluation of the proposed initiative and benefits, risks, and impacts of implementation. This evaluation shall include an assessment of the difference between the current method (baseline) and proposed new method including all related costs.

- (e) Evaluation and Decision. All CRPs must be submitted to and approved by the Contracting Officer. Included in the information provided by the CRP must be a discussion of the extent the proposed cost reduction effort may-
 - (1) Pose a risk to the health and safety of workers, the community, or to the environment;
 - (2) Result in a waiver or deviation from DOE requirements, such as DOE Orders and joint oversight agreements;
 - (3) Require a change in other contractual agreements;
 - (4) Result in significant organizational and personnel impacts;
 - (5) Create a negative impact on the cost, schedule, or scope of work in another area;
 - (6) Pose a potential negative impact on the credibility of the Contractor or the DOE; and
 - (7) Impact successful and timely completion of any of the work in the cost, technical, and schedule baseline.
 - (8) Significantly impact internal controls.
- (f) Acceptance or Rejection of CRPs. Acceptance or rejection of a CRP is a unilateral determination made by the Contracting Officer based on but not limited to the evaluation criteria established in paragraph (c) and (e). The Contracting Officer will notify the Contractor that a CRP has been accepted, rejected, or deferred within (Insert Number) days of receipt. The only CRPs that will be considered for acceptance are those which the Contractor can demonstrate, at a minimum, will-
 - (1) Result in net savings (in the sharing period if a design, process, or method change);
 - (2) Not reappear as costs in subsequent periods; and not result in any impairment of essential functions (e.g. safety and security)
- (g) The failure of the Contracting Officer to notify the Contractor of the acceptance, rejection, or deferral of a CRP within the specified time shall not be construed as approval.
- (h) Sharing Arrangement. If a CRP is accepted, the Contractor may share in the shared net savings. The sharing arrangement shall be as follows:
 - (1) 50% of the net savings shall be the Government's share of savings,
 - (2) 10% of the net savings shall be share of savings fee payable to the Contractor,
 - (3) 40% of the shared savings shall remain at the DOE/NNSA site and may be negotiated under the CRP for the following contract activities consistent with the other terms and conditions of this contract:
 - (i) Program, project, or indirect cost activities to finance additional mission work that has been approved by the HQ office;

- (ii) Projects that serve the M&O site as a whole, such as a parking structure, an office building or building a cafeteria that doesn't serve a discrete program and could be built with institutional general plant project funds;
- (iii) Employee compensation for non-key personnel in accordance with Appendix A. For the purposes of this clause, "employee compensation" means a one-time non-base lump sum payment which does not count towards the employee's pensionable earnings.

The specific percentage and sharing period shall be pre-negotiated and set forth in the contractual document and may span multiple years, however, cost sharing in future years will be contingent upon availability of funds and the Contracting Officer certifying each year that the savings have been sustained.

- (i) Validation of Shared Net Savings. Each year the Contractor shall certify the amount of savings achieved that year and that the Government's share of savings is available for redirection. The Contracting Officer shall validate actual shared net savings. If actual shared net savings cannot be validated, the Contractor will not be entitled to a share of savings. If the savings are validated, the Government will decide how to redirect its share of the funds.
- (j) Relationship to Other Incentives. Only those benefits of an accepted CRP not awardable under other clauses of this contract shall be considered under this clause.
- (k) Subcontracts. The Contractor may include a clause similar to this clause in any subcontract. In calculating any estimated shared net savings in a CRP under this contract, the Contractor's administration, development, and implementation costs shall include any subcontractor's allowable costs, and any CRP incentive payments to a subcontractor resulting from the acceptance of such CRP. The Contractor may choose any arrangement for subcontractor CRP incentive payments, provided that the payments not reduce the DOE'S share of shared net savings.

117 DEAR 970.5217-1 STRATEGIC PARTNERSHIP PROJECTS PROGRAM (NON-DOE FUNDED WORK) (APRIL 23, 2015)

(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 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.

(End of clause)

118 DEAR 970.5222-1 COLLECTIVE BARGAINING AGREEMENTS-MANAGEMENT AND OPERATING CONTRACTS (DEC 2000)

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

119 DEAR 970.5222-2 OVERTIME MANAGEMENT (DEC 2000)

- (a) The Contractor shall maintain adequate internal controls to ensure that employee overtime is authorized only if cost effective and necessary to ensure performance of work under this contract.
- (b) The Contractor shall notify the Contracting Officer when in any given year it is likely that overtime usage as a percentage of payroll may exceed 4%.

- (c) The Contracting Officer may require the submission, for approval, of a formal annual overtime control plan whenever Contractor overtime usage as a percentage of payroll has exceeded, or is likely to exceed, 4%, or if the Contracting Officer otherwise deems overtime expenditures excessive. The plan shall include, at a minimum—
 - (1) An overtime premium fund (maximum dollar amount);
 - (2) Specific controls for casual overtime for non-exempt employees;
 - (3) Specific parameters for allowability of exempt overtime;
 - (4) An evaluation of alternatives to the use of overtime; and
 - (5) Submission of a semi-annual report that includes for exempt and non-exempt employees—
 - (i) Total cost of overtime;
 - (ii) Total cost of straight time;
 - (iii) Overtime cost as a percentage of straight-time cost;
 - (iv) Total overtime hours;
 - (v) Total straight-time hours; and
 - (vi) Overtime hours as a percentage of straight-time hours.

120 DEAR 970.5223-1 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)

- (a) For the purposes of this clause,
 - (1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and
 - (2) Employees include subcontractor employees.
- (b) In performing work under this contract, the Contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Contractor shall exercise a degree of care commensurate with the work and the associated hazards. The Contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the Contractor's work planning and execution processes. The Contractor shall, in the performance of work, ensure that:
 - (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Contractor and subcontractor employees managing or supervising employees performing work.

- (2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.
 - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
 - (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
 - (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
 - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
 - (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the Contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the Contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.
- (c) The Contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the Contractor will—
- (1) Define the scope of work;
 - (2) Identify and analyze hazards associated with the work;
 - (3) Develop and implement hazard controls;
 - (4) Perform work within controls; and
 - (5) Provide feedback on adequacy of controls and continue to improve safety management.
- (d) The System shall describe how the Contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Contractor will measure system effectiveness.
- (e) The Contractor shall submit to the Contracting Officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the Contracting Officer. Guidance on the preparation, content, review, and approval of the System will be provided by the Contracting Officer. On an annual basis, the

Contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the Contractor's business processes for work planning, budgeting, authorization, execution, and change control.

- (f) The Contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract entitled "Laws, Regulations, and DOE Directives." The Contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.
- (g) The Contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Contractor fails to provide resolution or if, at any time, the Contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Contracting Officer may issue an order stopping work in whole or in part. Any stop work order issued by a contracting officer under this clause (or issued by the Contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the Contracting Officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Contracting Officer. The Contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- (h) Regardless of the performer of the work, the Contractor is responsible for compliance with the ES&H requirements applicable to this contract. The Contractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.
- (i) The Contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or-leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the Contractor may choose not to require the subcontractor to submit a Safety Management System for the Contractor's review and approval.

121 DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010)

- (a) Program Implementation. The Contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.
- (b) Remedies. In addition to any other remedies available to the Government, the Contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the Contractor subject to: the suspension of

contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.

- (c) *Subcontracts.* (1) The Contractor agrees to notify the Contracting Officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the Contractor believes may be subject to the requirements of 10 CFR part 707, unless the Contracting Officer agrees to a different date.
- (2) The DOE Prime Contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE Prime Contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.
- (3) The Contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

122 DEAR 970.5223-6 EXECUTIVE ORDER 13423, STRENGTHENING FEDERAL ENVIRONMENTAL, ENERGY, AND TRANSPORTATION MANAGEMENT (OCT 2010)

Since this contract involves Contractor operation of Government-owned facilities and/or motor vehicles, the provisions of Executive Order 13423 are applicable to the Contractor to the same extent they would be applicable if the Government were operating the facilities or motor vehicles.

Information on the requirements of the Executive Order may be found at

<http://www.archives.gov/federal-register/executive-orders/>.

123 DEAR 970.5223-7 SUSTAINABLE ACQUISITION PROGRAM (OCT 2010)

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

- (2) Biobased Products are described at <http://www.biopreferred.gov/>
 - (3) Energy efficient products are at <http://energystar.gov/products> for Energy Star products
 - (4) Energy efficient products are at <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) Green house gas emission inventories are required, including Scope 3 emissions which include contractor emissions. These are discussed at Section 13 of Executive Order 13514 which can be found at <http://www.archives.gov/federal-register/executive-orders/disposition.html>
 - (7) Non-Ozone Depleting Alternative Products are at <http://www.epa.gov/ozone/strathome.html>
 - (8) Water efficient plumbing products are at <http://epa.gov/watersense>
- (c) The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming Products, and 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts, require the use of products that have biobased content, are energy efficient, or have recycled content. To the extent that the services provided by the Contractor require provision of any of the above types of products, the Contractor must provide the energy efficient and environmentally sustainable type of product unless that type of product—
- (1) Is not available;
 - (2) Is not life cycle cost effective (or does not exceed 110% of the price of alternative items if life cycle cost data is unavailable), EPEAT is an example of lifecycle costs that have been analyzed by DOE and found to be acceptable at the silver and gold level;
 - (3) Does not meet performance needs; or,
 - (4) Cannot be delivered in time to meet a critical need.
- (d) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, (<http://www.epa.gov/greeningepa/practices/eo13423.htm>) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (<http://www.archives.gov/federal-register/executive-orders/disposition.html>). The Contractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, *Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic Performance*. This guide includes information concerning recycled content products, biobased products, energy efficient products, water efficient products, alternative fuels and vehicles, non ozone depleting substances and other environmentally preferable

products and services. This guide is available on the Internet at:
<http://management.energy.gov/documents/AcqGuide23pt0Rev1.pdf>.

- (e) Contractors must establish and maintain a documented energy management program which includes requirements for energy and water efficient equipment, EnergyStar or WaterSense, as applicable and procedures for verification of purchases, following the criteria in DOE Order 430.2B, Departmental Energy, Renewable Energy, and Transportation Management, Attachment 1, or its successor. This requirement should not be flowed down to subcontractors.
- (f) In complying with the requirements of paragraph (c) of this clause, the Contractor shall coordinate its activities with and submit required reports through the Environmental Sustainability Coordinator or equivalent position.
- (g) The Contractor shall prepare and submit performance reports using prescribed DOE formats, at the end of the Federal fiscal year, on matters related to the acquisition of environmentally preferable and sustainable products and services. This is a material delivery under the contract. Failure to perform this requirement may be considered a failure that endangers performance of this contract and may result in termination for default [see FAR 52.249-6, Termination (Cost Reimbursement)].
- (h) These provisions shall be flowed down only to first tier subcontracts exceeding the simplified acquisition threshold that support operation of the DOE facility and offer significant subcontracting opportunities for energy efficient or environmentally sustainable products or services. The Subcontractor will comply with the procedures in paragraphs (c) through (f) of this clause regarding the collection of all data necessary to generate the reports required under paragraphs (c) through (f) of this clause, and submit the reports directly to the Prime Contractor's Environmental Sustainability Coordinator at the supported facility. The Subcontractor will advise the Contractor if it is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in paragraph (c) of this clause apply. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the Subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties. Failure to comply with these reporting requirements may be considered a breach of contract with attendant consequences.
- (i) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "Subcontractor."

124 DEAR 970.5226-1 DIVERSITY PLAN (DEC 2000)

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

125 DEAR 970.5226-2 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000)

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

126 DEAR 970.5226-3 COMMUNITY COMMITMENT (DEC 2000)

It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. The basic elements of this policy include: (1) Recognizing the diverse interests of the region and its stakeholders, (2) engaging regional stakeholders in issues and concerns of mutual interest, and (3) recognizing that giving back to the community is a worthwhile business practice. Accordingly, the Contractor agrees that its business operations and performance under the Contract will be consistent with the intent of the policy and elements set forth above.

127 DEAR 970.5227-2 RIGHTS IN DATA -- TECHNOLOGY TRANSFER (ALTERNATE I) (DEC 2000) (NSA CLASS DEVIATION) (OCT 2011)

- (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 (h) 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 (i) 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).
 - (9) Patent Counsel means the National Nuclear Security Administration (NNSA) Patent Counsel assisting the DOE/NNSA contracting activity.
- (b) Allocation of Rights.
- (1) Except as may be otherwise expressly provided or directed in writing by the NNSA 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/NNSA, appropriate instances of the DOE/NNSA Work for Others Program;

- (iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE/NNSA 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 (h) of this clause (“Rights in Limited Rights Data”) or paragraph (i) 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/NNSA 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/NNSA 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 and except Restricted Data in Category C-24, 10 CFR, Part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology, 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, NNSA, or a third party, including a DOE

or NNSA contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE/NNSA, 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 National Security Technologies, LLC, under Contract No. DE-AC52-06NA25946 with the U.S. Department of Energy/National Nuclear Security Administration. 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 and NNSA 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 Contractor Request to Assert Copyright.
 - (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 or NNSA 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/NNSA 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 or NNSA from meeting its obligations under treaties and international agreements, or
 - (E) would be detrimental to one or more of DOE's or NNSA's programs. Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property and/or the NNSA Patent Counsel. 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 or NNSA 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/NNSA 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/NNSA's permission for the Contractor to assert copyright or advise the Contractor that DOE/NNSA needs additional time to respond, and the reasons therefore.

(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/NNSA 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, NNSA, 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/NNSA approval. The DOE/NNSA 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 National Security Technologies, LLC, under Contract No. DE-AC52-06NA25946 with the Department of Energy/National Nuclear Security Administration. For (period approved by NNSA 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/NNSA. Neither the United States nor the United States Department of Energy/National Nuclear Security Administration, 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/NNSA has the right, during the five (5) year or specified longer period approved by Patent Counsel as provided for in paragraph (e)(3)(iii) 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/NNSA 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/NNSA 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/NNSA 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 or NNSA 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 DOE/NNSA to assert copyright in the computer software pursuant to paragraph (c)(3) of this section.

Notice: This computer software was prepared by [insert the Contractor's name and the individual author], hereinafter the Contractor, under Contract No. DE-AC52-06NA25946 with the Department of Energy/National Nuclear Security Administration (DOE/NNSA). All rights in the computer software are reserved by DOE/NNSA 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 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. Such software shall hereinafter be referred to as Open Source Software or OSS, subject to the following:
 - (1) Obtain Program Approval.
 - (i) The Contractor shall ensure that the DOE or NNSA Program or Programs that have provided funding (Funding Source) to develop the software have approved the distribution of the software as OSS. The funding Program(s) may provide blanket approval for all software developed with funding from that Program. However, OSS release for any one such software shall be subject to approval by all other funding Programs which provide a substantial portion of the funds for the software, if any. If approval from the funding Program(s) is not practicable, DOE Patent Counsel may provide approval instead. For software jointly developed under a CRADA or User Facility, authorization from the CRADA Participant(s) or User Facility User(s), as applicable, shall be additionally obtained for OSS release.

- (ii) If the software is developed with funding from a federal government agency other than DOE, then, authorization from all the funding source(s) shall be obtained for OSS release, if practicable. Such federal government agency(ies) may provide blanket approval for all software developed with funding from that agency. However, OSS release of any one of such software shall be subject to approval by all other funding sources for the software, if any. If majority approval from such federal government agency(s) is not practicable, DOE Patent Counsel may provide approval instead.
- (2) Assert Copyright in the OSS. Once the Contractor has obtained Funding Source approval in accordance with subparagraph (1) of this section, copyright in the software to be distributed as OSS, may be asserted by the Contractor, or, for OSS developed under a CRADA or User Facility, either by the Contractor, CRADA Participant, or User Facility User, as applicable, which precludes marking such OSS as Protected Information.
- (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/NNSA) 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 Record. The Contractor must maintain a record, available for inspection by DOE, of software distributed as OSS. The record 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 the funding Program's or source's 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 DOE/NNSA Patent Counsel, the Contractor shall periodically provide Patent Counsel a copy of the record.
- (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, DOE or other industry standard means.
- (6) Select an OSS License. Each OSS will be distributed pursuant to an OSS license. The Contractor may choose among industry standard OSS licenses or create its own set of Contractor standard licenses. To assist the Contractor, the DOE Assistant General

Counsel for Technology Transfer and Intellectual Property may periodically issue guidance on OSS licenses. Each Contractor created OSS license, must contain, at a minimum, the following provisions:

- (i) A disclaimer or equivalent that disclaims the Government's and Contractor's liability for licensees' and third parties' use of the software; and
 - (ii) A grant of permission for licensee to distribute OSS containing the licensee's derivative works subject to trademark restrictions (see subparagraph (10) 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.
- (7) Collection of administrative costs is permissible. However, the Contractor may not collect a royalty or other fee in excess of a good faith amount for cost recovery from any licensee for the Contractor's OSS.
- (8) 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.
- (9) 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 of the derivative versions.
- (10) 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 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.
- (11) 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 data copyrighted in accordance with paragraph (f)(2) of this clause to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.
- (12) 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 publicly available. 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 latest version of the 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.

- (h) 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 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 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/NNSA.
 - (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-AC52-06NA25946 with the United States Department of Energy/National Nuclear Security Administration 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:

- (1) Use (except for manufacture) by support services contractors within the scope of their contracts;
- (2) 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;
- (3) 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;
- (4) 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
- (5) 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/National Nuclear Security Administration
Contract No. DE-AC52-06NA25946. 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/NNSA Contract No. DE-AC52-06NA25946 with National Security Technologies, 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.

128 DEAR 970.5227-3 TECHNOLOGY TRANSFER MISSION (AUG 2002) (NNSA CLASS DEVIATION) (OCT 2011)

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 Facilities, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Facilities 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 Facilities; negotiating licensing agreements and assignments for Intellectual Property made, created, or acquired at or by the Facilities that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Work for Others (WFO); providing information exchanges; and making available laboratory or weapon production user facilities. It is fully expected that the Contractor shall use all of the mechanisms

available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, WFO, science education activities, consulting, personnel exchanges, assignments, and licensing in accordance with this clause.

- (3) Nothing in this, or any other section of this contract provides the Contractor with any property right, including the right to license, in data first produced in the performance of this contract, except as expressly provided in the contract or approved in writing by the Contracting Officer.
- (b) Definitions.
- (1) Contractor's Facilities Director means the individual who has supervision over all or substantially all of the Contractor's operations at the facilities.
 - (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 Facilities, and one or more parties including at least one non-Federal party under which the Government, through its Facilities, 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 Facilities; 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 Facilities 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 Facilities' Intellectual Property, subject to the Government's retained rights.
 - (6) Facilities' 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 Facilities' employees or through the use of Facilities' research resources.

- (7) Facilities' 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 Facilities' employees or through the use of Facilities' research resources.
- (8) Bailment means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of Facilities' Biological Materials or Facilities' 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.
- (9) Privately funded technology transfer means the prosecuting, maintaining, licensing, and marketing of inventions which are not owned by the Government (and not related to CRADAs) when such activities are conducted entirely without the use of Government funds.
- (c) Allowable Costs.
- (1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710). The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this Contract. In addition to any separately designated funds, these costs in any fiscal year shall not exceed an amount equal to 0.5 percent of the operating funds included in the Federal research and development budget (including Work for Others) of the Facilities 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 all persons participating in the Facilities 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 research involving non-federal sponsors and for 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 and NNSA projects and programs;
- (4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or WFO activities of the Contractor;
- (5) Conduct DOE- and NNSA-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 NNSA 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 Facilities employee within the previous two years or to the company in which the individual is a principal;
- (9) Notify non-Federal sponsors of WFO activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of WFOs or user agreements; and
- (10) Notify NNSA prior to the Contractor's acting in an advisory role for evaluation of a technical proposal for funding by a third party or a DOE or NNSA program, 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 Facilities and by entities other than the Contractor.
- (f) U.S. Industrial Competitiveness
- (1) In the interest of enhancing U.S. Industrial Competitiveness in its licensing and assignments of Intellectual Property, the Contractor shall 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 decisions involving licensing or assignment of Facilities' intellectual property where the Contractor obtains rights during the course of the Contractor's operation of the Facilities 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 or assigning 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; and
- (C) if the proposed licensee, assignee, or parent of either type of entity is subject to the control of a foreign company or 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 and 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 Facilities, consistent with the research and development mission and objectives of the Facilities 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 Facilities' 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 Facilities 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 Facilities, 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 notify the Contracting Officer of any changes to its 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. Such changes shall be subject to the approval of 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 Facilities 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 Facilities, 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 NNSA to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE/NNSA's nuclear weapon production complex. NNSA 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 NNSA 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/NNSA 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/NNSA 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/NNSA and in such a format which will serve to adequately inform DOE/NNSA 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/NNSA's reporting to Congress, the Contractor is required to submit annually to DOE/NNSA a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Facilities 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. Facilities 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 NNSA-approved Joint Work Statement (JWS), the Facilities Director, or designee, may enter into CRADAs on behalf of the DOE/NNSA subject to the requirements set forth in this paragraph. Also, under such circumstances as DOE or NNSA considers appropriate, the DOE or NNSA may waive the following requirements associated with the submission and approval of JWS and CRADA agreements, as legislated by the 2001 National Defense Authorization Act.
 - (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 Facilities 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 Facilities 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 Facilities 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/NNSA 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 or NNSA facilities for use by DOE/NNSA or its Contractors by or on behalf of the Government. When data protected pursuant to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.
 - (iii) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the Contractor under a CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing of data as an alternative to the submittal of invention disclosures which include data protected pursuant to paragraph (n)(3)(i) of this clause.
- (4) Work For Others and User Facility Programs.
- (i) Work for Others (WFO) and User Facility Agreements (UFAs) are available for use by the Contractor in addition to CRADAs for achieving utilization of employee expertise and unique facilities for maximizing technology transfer. The Contractor agrees to inform prospective CRADA participants, which are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, i.e., WFO and UFA, and of the Class Patent Waiver provisions associated therewith, when conditions associated

with the activity under the agreement can appropriately be performed under such alternative agreement(s).

- (ii) Where the Contractor believes that the transfer of technology to the U.S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in WFO and UFAs, a request may be made to the contracting officer for an exception to the Class Waivers.
 - (iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE/NNSA 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/NNSA class waiver (including Work for Others and User Class Waivers) or individually negotiated waiver which applies to the agreement.
- (5) Conflicts of Interest.
- (i) Except as provided in paragraph (n)(5)(iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA, if, to such employee's knowledge:
 - (A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee-
 - (1) holds financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;
 - (2) receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA; or
 - (B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.
 - (ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA certify through the Contractor to the contracting officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.
 - (iii) The requirements of paragraphs (n)(5)(i) and (n)(5)(ii) of this clause shall not apply in a case where the contracting officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs in the

preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the contracting officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the Contractor employee's participation in the process of preparing, negotiating, or approving the CRADA.

- (o) Technology Transfer in Other Cost-Sharing Agreements. In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the contracting officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.
- (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 Facilities, and technology licensing.
 - (2) The Ombudsman shall be a senior official of the Contractor's Facilities staff, who is not involved in day-to-day technology partnerships, patents or technology licensing, or, if appointed from outside the Facilities, 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 Facilities 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 and NNSA, 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.
- (q) Inapplicability of Provisions to Privately Funded Technology Transfer Activities. Nothing in paragraphs (c) Allowable Costs, (e) Fairness of Opportunity, (f) U.S. Industrial Competitiveness, (g) Indemnity -- Product Liability, (h) Disposition of Income, and (i) Transfer to Successor Contractor of this clause are intended to apply to the contractor's privately funded technology transfer activities if such privately funded activities are addressed elsewhere in the contract.

129 DEAR 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002)

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

130 DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)

- (a) The Contractor shall report to the Contracting Officer promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
- (b) If any person files a claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Except where the Contractor has agreed to indemnify the Government, the Contractor shall furnish such evidence and information at the expense of the Government.
- (c) The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontracts at any tier expected to exceed \$100,000.

131 DEAR 970.5227-6 PATENT INDEMNITY-SUBCONTRACTS (DEC 2000)

Except as otherwise authorized by the Contracting Officer, the Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the

Government) from Contractor's subcontractors for any contract work subcontracted in accordance with FAR 48 CFR 52.227-3.

132 DEAR 970.5227-8 REFUND OF ROYALTIES (AUG 2002)

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

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

133 DEAR 970.5227-12 PATENT RIGHTS MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, ADVANCE CLASS WAIVER (ALTERNATE I) (AUG 2002) (NNSA CLASS DEVIATION) (OCT 2011)

- (a) Definitions.
 - (1) DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR, Part 781.
 - (2) DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR, Part 784.
 - (3) Exceptional Circumstance Subject Invention means any subject invention in a technical field or related to a task determined by the Department of Energy/National Nuclear Security Administration to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii), and in accordance with 37 CFR 401.3(e).
 - (4) 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.).
 - (5) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.
 - (6) Patent Counsel means National Nuclear Security Administration (NNSA) Patent Counsel assisting the 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) Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant

Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

- (9) Weapons Related Subject Invention means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs, including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy or the National Nuclear Security Administration.
- (b) Allocation of Principal Rights.
- (1) Assignment to the Government. Except to the extent that rights are retained by the Contractor by the granting of an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.
 - (2) Advance class waiver of Government rights to the Contractor. DOE/NNSA may grant to the Contractor an advance class waiver of Government rights in any or all subject inventions, including weapons-related subject inventions, at the time of execution of the contract, such that the Contractor may elect to retain the entire right, title and interest throughout the world to such waived subject inventions, in accordance with the terms and conditions of the advance class waiver. The Contractor does not have a right to retain title to any weapons related subject inventions prior to being granted title by NNSA under the Class Waiver. In its elections of weapons related subject inventions, the NNSA alone will make the determination that the subject invention is in fact a weapons related subject invention, and that rights to the Contractor may be granted, based on specific procedural requirements that the Contractor must meet as enumerated in the Class Waiver. Unless otherwise provided by the terms of the advance class waiver, any rights in a subject invention retained by the Contractor under an advance class waiver are subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.
 - (3) Government license. With respect to any subject invention to which the Contractor retains title, either under an advance class waiver pursuant to subparagraph (b)(2) or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Government has 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.
 - (4) Foreign patent rights. If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE/NNSA, and DOE/NNSA may grant the Contractor's request, subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

- (5) Exceptional circumstance subject inventions. Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b)(7) of this clause, the Contractor does not have the 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 initiatives or programs 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);
 - (D) Solid State Energy Conversion Alliance (SECA) if the Contractor is a participant in the “Core Technology Program”; and
 - (E) Solid State Lighting Program (SSLP) if the Contractor is a participant in the “Core Technology Program.”
- (iii) DOE/NNSA reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, programs, initiatives, and/or other classifications for the purpose of defining DOE/NNSA exceptional circumstance subject inventions.
- (6) 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 <http://www.state.gov/documents/organization/123747.pdf>. DOE/NNSA 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.

- (7) Contractor request for greater rights. The Contractor may request greater rights in an identified subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, in accordance with the DOE patent waiver regulations, by submitting such a request in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE/NNSA pursuant to subparagraph (c)(1) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE/NNSA may grant or refuse to grant such a request by the Contractor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor under a determination of greater rights is subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.
 - (8) Contractor employee-inventor rights. If the Contractor does not elect to retain title to a subject invention or does not request greater rights in a subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, 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/NNSA, and DOE/NNSA may grant or refuse to grant such a request by the Contractor employee-inventor.
 - (9) Government assignment of rights in Government employees' subject inventions. If a DOE or NNSA employee is a joint inventor of a subject invention to which the Contractor has rights, DOE or NNSA, as applicable, may assign or refuse to assign any rights in the subject invention acquired by the Government from the DOE or NNSA employee to the Contractor, consistent with 48 CFR 27.304-1(d). Unless otherwise provided in the assignment, the rights assigned to the Contractor are subject to the Government license provided for in subparagraph (b)(3) of this clause, and to any provision of this clause applicable to subject inventions in which rights are retained by the Contractor, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the DOE or NNSA employee.
 - (10) Weapons related subject inventions. Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have a right to retain title to any weapons related subject inventions.
- (c) Subject Invention Disclosure, Election of Title, and Filing of Patent Application by Contractor.
- (1) Subject invention disclosure. The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after an inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject

invention. The disclosure to DOE/NNSA shall be in the form of a written report and shall include:

- (i) the contract number under which the subject invention was made;
- (ii) the inventor(s) of the subject invention;
- (iii) a description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;
- (iv) the date and identification of any publication, on sale or public use of the invention;
- (v) the date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;
- (vi) a statement indicating whether the subject invention is an exceptional circumstance subject invention, related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;
- (vii) all sources of funding by Budget and Resources (B&R) code; and
- (viii) the identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Work-for-Others agreements.

Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE/NNSA under this paragraph are deemed made in the manner specified in sections (a)(1) and (a)(2) of 42 U.S.C. 5908.

- (2) Publication after disclosure. After disclosure of the subject invention to the DOE/NNSA, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.
- (3) Election by the Contractor under an advance class waiver. If the Contractor has the right to elect to retain title to subject inventions under an advance class waiver granted in accordance with subparagraph (b)(2) of this clause, and unless otherwise provided for by the terms of the advance class waiver, the Contractor shall elect in writing whether or not to retain title to any subject invention by notifying DOE/NNSA within two (2) years of the date of the disclosure of the subject invention to DOE/NNSA, in accordance with subparagraph (c)(1) of this clause. The notification shall identify the

advance class waiver, state the countries, including the United States, in which rights are retained, and certify that the subject invention is not an exceptional circumstance subject invention or subject to a treaty or international agreement. If a publication, on sale or public use of the subject invention has initiated the 1-year statutory period under 35 U.S.C. 102(b), the period for election may be shortened by DOE/NNSA to a date that is no more than sixty (60) days prior to the end of the 1-year statutory period.

- (4) Filing of patent applications by the Contractor under an advance class waiver. If the Contractor has the right to retain title to a subject invention in accordance with an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (b)(7) of this clause, and unless otherwise provided for by the terms of the advance class waiver or greater rights determination, the Contractor shall file an initial patent application claiming the subject invention to which it retains title either within one (1) year after the Contractor's election to retain or grant of title to the subject invention or prior to the end of any 1-year statutory period under 35 U.S.C. 102(b), whichever occurs first. Any patent applications filed by the Contractor in foreign countries or international patent offices shall be filed within either ten (10) months of the corresponding initial patent application or, if such filing has been prohibited by a Secrecy Order, within six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications.
 - (5) Submission of patent information and documents. If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel 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.
 - (6) Contractor's request for an extension of time. Requests for an extension of the time to disclose a subject invention, to elect to retain title to a subject invention, or to file a patent application under subparagraphs (c)(1), (3), and (4) of this clause may be granted at the discretion of Patent Counsel or DOE/NNSA.
 - (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 35 U.S.C. 205 and 37 CFR, Part 40.
- (d) Conditions When the Government May Obtain Title Notwithstanding an Advance Class Waiver.
- (1) Return of title to a subject invention. If the Contractor requests that DOE/NNSA acquire title or rights from the Contractor in a subject invention, including an

exceptional circumstance subject invention, to which the Contractor retained title or rights under subparagraph (b)(2) or subparagraph (b)(7) of this clause, DOE/NNSA may acquire such title or rights from the Contractor, or DOE/NNSA may decide against acquiring such title or rights from the Contractor, at DOE/NNSA's sole discretion.

- (2) Failure to disclose or elect to retain title. Title vests in DOE/NNSA and DOE/NNSA may request, in writing, a formal assignment of title to a subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE/NNSA, if the Contractor elects not to retain title to the subject invention under an advance class waiver, or the Contractor fails to disclose or fails to elect to retain title to the subject invention within the times specified in subparagraphs (c)(1) and (c)(3) of this clause.
 - (3) Failure to file domestic or foreign patent applications. In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c)(4) of this clause, DOE/NNSA may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE/NNSA; provided, however, that if the Contractor has filed a patent application in any country after the times specified in subparagraph (c)(4) of this clause, but prior to its receipt of DOE/NNSA's written request for title, the Contractor continues to retain title in that country.
 - (4) Discontinuation of patent protection by the Contractor. If the Contractor decides to discontinue the prosecution of a patent application, the payment of maintenance fees, or the defense of a subject invention in a reexamination or opposition proceeding, in any country, DOE/NNSA may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE/NNSA.
 - (5) Termination of advance class waiver. DOE/NNSA may request, in writing, title to any subject inventions from the Contractor, and the Contractor shall convey title to the subject inventions to DOE/NNSA, if the advance class waiver granted under subparagraph (b)(2) of this clause is terminated under paragraph (u) of this clause.
- (e) Minimum Rights of the Contractor.
- (1) Request for a Contractor license. Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c)(1) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE/NNSA may grant or refuse to grant such a request by the Contractor. If DOE/NNSA grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.
 - (2) Transfer of a Contractor license. DOE/NNSA shall approve any transfer of the Contractor's license in a subject invention, and DOE/NNSA may determine that the Contractor's license is non-transferrable, on a case-by-case basis.

- (3) Revocation or modification of a Contractor license. DOE/NNSA may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR, Part 404, and DOE/NNSA licensing regulations. DOE/NNSA may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensees or its domestic subsidiaries or affiliates have achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE/NNSA may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.
 - (4) Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE/NNSA shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE/NNSA for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR, Part 404, and DOE/NNSA licensing regulations.
- (f) Contractor Action to Protect the Government's Interest.
- (1) Execution and delivery of title or license instruments. The Contractor agrees to execute or have executed, and to deliver promptly to DOE or NNSA all instruments necessary to accomplish the following actions:
 - (i) establish or confirm the Government's rights throughout the world in subject inventions to which the Contractor elects to retain title;
 - (ii) convey title in a subject invention to DOE/NNSA pursuant to subparagraph (b)(5) and paragraph (d) of this clause; or
 - (iii) enable the Government to obtain patent protection throughout the world in a subject invention to which the Government has title.
 - (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, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(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) Contractor procedures for reporting subject inventions to DOE/NNSA. The Contractor agrees to establish and maintain effective procedures for ensuring the prompt

identification and timely disclosure of subject inventions to DOE/NNSA. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation and approval of the effectiveness of such procedures by the Contracting Officer.

- (4) Notification of discontinuation of patent protection. With respect to any subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall notify Patent Counsel of any decision to discontinue the prosecution of a patent application, payment of maintenance fees, or defense of a subject invention in a reexamination or opposition proceeding, in any country, not less than thirty (30) days before the expiration of the response period for any action required by the corresponding patent office.
 - (5) Notification of Government rights. With respect to any subject invention to which the Contractor has title, the Contractor agrees to include, within the specification of any United States patent application and within any patent issuing thereon claiming a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy/National Nuclear Security Administration. The Government has certain rights in the invention."
 - (6) Avoidance of Royalty Charges. If the Contractor licenses a subject invention, the Contractor agrees to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the subject invention to any party.
 - (7) DOE/NNSA approval of assignment of rights. Rights in a subject invention in the United States may not be assigned by the Contractor without the approval of DOE/NNSA.
 - (8) Small business firm licensees. The Contractor shall make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and may 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, the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision as to whether to give a preference in any specific case is at the discretion of the Contractor.
 - (9) 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.
- (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)(5) of this clause.
- (3) Inclusion of patent rights clause-subcontractors other than non-profit organizations or 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 and any applicable exceptional circumstance, in any contract for experimental, developmental, demonstration or research work.
- (4) DOE/NNSA and subcontractor contract. With respect to subcontracts at any tier, DOE/NNSA, the subcontractor and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE/NNSA with respect to those matters covered by this 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 rights clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such refusal and including relevant information for expediting disposition of the matter; and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.
- (6) Notification of award of subcontract. Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.
- (7) Identification of subcontractor subject inventions. If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.
- (h) Reporting on Utilization of Subject Inventions. Upon request by DOE or NNSA, the Contractor agrees to submit periodic reports, no more frequently than annually, describing the utilization of a subject invention or efforts made by the Contractor or its licensees or assignees to obtain utilization of the subject invention. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties

received by the Contractor, and other data and information reasonably specified by DOE or NNSA. Upon request by DOE or NNSA, the Contractor also agrees to provide reports in connection with any march-in proceedings undertaken by DOE/NNSA, in accordance with paragraph (j) of this clause. If any data or information reported by the Contractor in accordance with this provision is considered privileged and confidential by the Contractor, its licensee, or assignee and the Contractor properly marks the data or information privileged or confidential, DOE and NNSA agree not to disclose such information to persons outside the Government, to the extent permitted by law.

- (i) Preference for United States Industry. Notwithstanding any other provision of this clause the Contractor agrees that with respect to any subject invention in which it retains title, neither it nor any assignee may grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products 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, DOE or NNSA may waive the requirement for such an agreement 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. With respect to any subject invention to which the Contractor has elected to retain or is granted title, DOE or NNSA may, in accordance with the procedures in the DOE patent waiver regulations, 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. If the Contractor, assignee or exclusive licensee refuses such a request, DOE/NNSA has the right to grant such a license itself if DOE/NNSA 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 that are not reasonably satisfied by the Contractor, assignee, or their licensees;
 - (3) Such action is necessary to meet requirements for public use specified by government regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
 - (4) Such action is necessary because the agreement to substantially manufacture in the United States and required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- (k) Communications. The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel identified in the contract.
- (l) Reports.

- (1) Interim reports. Upon DOE/NNSA's request, the Contractor shall submit to DOE/NNSA, no more frequently than annually, a list of subject inventions disclosed to DOE/NNSA during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE/NNSA in accordance with the requirements of subparagraphs (f)(3) and (f)(4) of this clause.
 - (2) Final reports. Upon DOE's or NNSA's request, the Contractor shall submit to DOE or NNSA, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.
- (m) Facilities License. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility
- (1) to practice or have practiced by or for the Government at the facility, and
 - (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.
- (n) 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 (o)(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.
- (o) 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.
- (p) Examination of Records Relating to Inventions.
- (1) Contractor compliance. Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.
 - (2) Unreported inventions. If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE/NNSA, and the Contracting Officer believes the unreported invention may be a subject invention, DOE or NNSA may require the Contractor to submit to DOE or NNSA, 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 or NNSA, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.
- (q) Patent Functions. Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE/NNSA 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.

- (r) 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) any person who is subject to treaties or international agreements as set forth in paragraph (b)(6) of this clause or to agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.
- (s) Annual Appraisal by NNSA Patent Counsel. NNSA Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE and NNSA policy.
- (t) Publication. It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interest of DOE/NNSA or the Contractor, timely notification of the release of scientific and technical publications shall be provided to the Contractor personnel responsible for patent matters. Contractor delivery of this data and information to the NNSA Patent Counsel shall be considered met if the required data and information is entered into an appropriate database of listed publications and the NNSA Patent Counsel has read only access to the database. A copy of this data and information must be made available to the Contracting Officer upon request.
- (u) Termination of Contractor's Advance Class Waiver. If a request by the Contractor for an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (c) of this clause contains false material statements or fails to disclose material facts, and DOE or NNSA relies on the false statements or omissions in granting the Contractor's request, the waiver or grant of any Government rights (in whole or in part) to the subject invention(s) may be terminated at the discretion of the Secretary of Energy or designee. Prior to termination, DOE or NNSA shall provide the Contractor with written notification of the termination, including a statement of facts in support of the termination, and the Contractor shall be allowed thirty (30) days, or a longer period authorized by the Secretary of Energy or designee for good cause shown in writing by the Contractor, to show cause for not terminating the waiver or grant. Any termination of an advance class waiver or a determination of greater rights is subject to the Contractor's license as provided for in paragraph (f) of this clause.

134 DEAR 970.5228-1 INSURANCE—LITIGATION AND CLAIMS (JUL 2013)

- (a) The contractor must comply with 10 CFR part 719, Contractor Legal Management Requirements, if applicable.
- (b)
 - (1) Except as provided in paragraph (b)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the Contracting Officer.
 - (2) The contractor may, with the approval of the Contracting Officer, maintain a self-insurance program in accordance with FAR 28.308; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with sureties and insurers approved by the Contracting Officer.

(c) The contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the Contracting Officer.

(d) Except as provided in paragraph (f) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed—

(1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance without regard to the clause of this contract entitled “Obligation of Funds.”

(e) The Government's liability under paragraph (d) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(f) (1) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities to third parties, including contractor employees, and directly associated costs which may include but are not limited to litigation costs, counsel fees, judgments and settlements—

(i) Which are otherwise unallowable by law or the provisions of this contract, including the cost reimbursement limitations contained in 48 CFR part 31, as supplemented by 48 CFR 970.31;

(ii) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the Contracting Officer; or

(iii) Which were caused by contractor managerial personnel's—

(A) Willful misconduct;

(B) Lack of good faith; or

(C) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

(2) The term “contractor's managerial personnel” is defined in the Property clause in this contract.

(g) (1) All litigation costs, including counsel fees, judgments and settlements shall be segregated and accounted for by the contractor separately. If the Contracting Officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.

- (2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the Contracting Officer.
- (3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (f) of this clause is not allowable.
- (h) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or non-reimbursable costs incurred in connection with contract performance.

135 DEAR 970.5229-1 STATE AND LOCAL TAXES (DEC 2000)

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

136 DEAR 970.5231-4 PREEXISTING CONDITIONS (DEC 2000)—Alternate II (DEC 2000)

- (a) Any liability, obligation, loss, damage, claim (including without limitation, a claim involving strict or absolute liability), action, suit, civil fine or penalty, cost, expense or disbursement, which may be incurred or imposed, or asserted by any party and arising out of any condition, act or failure to act which occurred before [Insert date this clause was included in contract], in conjunction with the management and operation of [Insert name of facility], shall be deemed incurred under Contract No. [Insert number of prior 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.

137 DEAR 970.5232-1 REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS (DEC 2000)

- (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.

138 DEAR 970.5232-2 PAYMENTS AND ADVANCES (DEC 2000)—Alternate III (DEC 2000)

- (a) Installments of fixed-fee. The fixed-fee payable under this contract shall become due and payable in periodic installments in accordance with a schedule determined by the Contracting Officer. Fixed-fee payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the Contractor, including any amounts owed for disallowed costs under this contract. No fixed-fee payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the Contracting Officer.
- (b) Payments on Account of Allowable Costs. The Contracting Officer and the Contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the Contracting Officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefore shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual therefore may be included in costs for payment purposes, provided that they are paid to the fund within 30

days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.

- (c) Special financial institution account-use. All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the Contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix-. No part of the funds in the special financial institution account shall be commingled with any funds of the Contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer determines that the balance of such special financial institution account exceeds the Contractor's current needs, the Contractor shall promptly make such disposition of the excess as the Contracting Officer may direct.
- (d) Title to funds advanced. Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the Contractor hereunder is not a loan to the Contractor, and will not require the payment of interest by the Contractor, and that the Contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.
- (e) Financial settlement. The Government shall promptly pay to the Contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the Contracting Officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after—
 - (1) Compliance by the Contractor with DOE's patent clearance requirements; and
 - (2) The furnishing by the Contractor of—
 - (i) An assignment of the Contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the Contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;
 - (ii) A closing financial statement;
 - (iii) The accounting for Government-owned property required by the clause entitled "Property"; and
 - (iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions—

- (A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Contractor;
 - (B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the Contractor's right of action first accrues. In addition, the Contractor shall provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause, 48 CFR 970.5228-1, "Insurance—Litigation and Claims");
 - (C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and
 - (D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.
- (3) In arriving at the amount due the Contractor under this clause, there shall be deducted—
- (i) Any claim which the Government may have against the Contractor in connection with this contract; and
 - (ii) Deductions due under the terms of this contract and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.
- (f) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.
 - (g) Discounts. The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government.
 - (h) Collections. All collections accruing to the Contractor in connection with the work under this contract, except for the Contractor's fee and royalties or other income accruing to the Contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the Contracting Officer.

- (i) Direct payment of charges. The Government reserves the right, upon ten days written notice from the Contracting Officer to the Contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the Contractor therefore.
- (j) Determining allowable costs. The Contracting Officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the Department of Energy Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.
- (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.

139 DEAR 970.5232-3 ACCOUNTS, RECORDS AND INSPECTION (DEC 2010)

- (a) Accounts. The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the Contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.
- (b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause, Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the Contractor shall afford DOE proper facilities for such inspection and audit.
- (c) Audit of subcontractors' records. The Contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the Contracting Officer.
- (d) Disposition of records. Except as agreed upon by the Government and the Contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Contractor in

connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause 970.5204-3, Access to and Ownership of Records, all other records in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.

- (e) Reports. The Contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.
- (f) Inspections. The DOE shall have the right to inspect the work and activities of the Contractor under this contract at such time and in such manner as it shall deem appropriate.
- (g) Subcontracts. The Contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.
- (h) Comptroller General.
 - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's or subcontractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.
 - (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
 - (3) Nothing in this contract shall be deemed to preclude an audit by the Government Accountability Office of any transaction under this contract.
- (i) Internal audit. The Contractor agrees to design and maintain an internal audit plan and an internal audit organization.
 - (1) Upon contract award, the exercise of any contract option, or the extension of the contract, the Contractor must submit to the Contracting Officer for approval an Internal Audit Implementation Design to include the overall strategy for internal audits. The Audit Implementation Design must describe—
 - (i) The internal audit organization's placement within the contractor's organization and its reporting requirements;

- (ii) The audit organization's size and the experience and educational standards of its staff;
 - (iii) The audit organization's relationship to the corporate entities of the Contractor;
 - (iv) The standards to be used in conducting the internal audits;
 - (v) The overall internal audit strategy of this contract, considering particularly the method of auditing costs incurred in the performance of the contract;
 - (vi) The intended use of external audit resources;
 - (vii) The plan for audit of subcontracts, both pre-award and post-award; and
 - (viii) The schedule for peer review of internal audits by other contractor internal audit organizations, or other independent third party audit entities approved by the DOE Contracting Officer.
- (2) By each January 31 of the contract performance period, the Contractor must submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year. That report shall reflect the results of the internal audits during the previous fiscal year and the actions to be taken to resolve weaknesses identified in the contractor's system of business, financial, or management controls.
- (3) By each June 30 of the contract performance period, the Contractor must submit to the Contracting Officer an annual audit plan for the activities to be undertaken by the internal audit organization during the next fiscal year that is designed to test the costs incurred and contractor management systems described in the internal audit design.
- (4) The Contracting Officer may require revisions to documents submitted under paragraphs (i)(1), (i)(2), and (i)(3) of this clause, including the design plan for the internal audits, the annual report, and the annual internal audits.
- (j) Remedies. If at any time during contract performance, the Contracting Officer determines that unallowable costs were claimed by the Contractor to the extent of making the contractor's management controls suspect, or the contractor's management systems that validate costs incurred and claimed suspect, the Contracting Officer may, in his or her sole discretion, require the Contractor to cease using the special financial institution account in whole or with regard to specified accounts, requiring reimbursable costs to be claimed by periodic vouchering. In addition, the Contracting Officer, where he or she deems it appropriate, may: Impose a penalty under 48 CFR 970.5242-1, Penalties for Unallowable Costs; require a refund; reduce the contractor's otherwise earned fee; and take such other action as authorized in law, regulation, or this contract.

140 DEAR 970.5232-4 OBLIGATION OF FUNDS (DEC 2000)

- (a) Obligation of funds. The amount presently obligated by the Government with respect to this contract is dollars (\$). Such amount may be increased unilaterally by DOE by written notice to the Contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others

for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the Contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract. Nothing in this paragraph is to be construed as authorizing the Contractor to exceed limitations stated in financial plans established by DOE and furnished to the Contractor from time to time under this contract.

- (b) Limitation on payment by the Government. Except as otherwise provided in this contract and except for costs which may be incurred by the Contractor pursuant to the Termination clause of this contract or costs of claims allowable under the contract occurring after completion or termination and not released by the Contractor at the time of financial settlement of the contract in accordance with the clause entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the Contractor's fee and any negotiated fixed amount. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of—
 - (1) collections accruing to the Contractor in connection with the work under this contract and processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, regulations, and DOE directives clause of this contract; and
 - (2) other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.
- (c) Notices-Contractor excused from further performance. The Contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), plus the Contractor's best estimate of collections to be received and available during the day period hereinafter specified, is in the Contractor's best judgment sufficient to continue contract operations at the programmed rate for only days and to cover the Contractor's unpaid fee and any negotiated fixed amounts, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), less the amount of the Contractor's fee then earned but not paid and any negotiated fixed amounts, is in the Contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the Contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the Contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the Termination clause of this contract.
- (d) Financial plans; cost and encumbrance limitations. In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the Contractor, establish controls on the costs to be

incurred and encumbrances to be made in the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The contractor agrees—

- (1) To comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives;
 - (2) To comply with other requirements of such plans and directives; and
 - (3) To notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.
- (e) Government's right to terminate not affected. The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the Termination clause of this contract.

141 DEAR 970.5232-5 LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (DEC 2000)

- (a) The Contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the clauses of this contract entitled, "Cost Accounting Standards," and "Administration of Cost Accounting Standards," if its failure to comply with the clauses is caused by the Contractor's compliance with published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Senior Procurement Executive.
- (b) The Contractor is not liable to the Government for increased costs or interest resulting from its subcontractors' failure to comply with the clauses at 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.

142 DEAR 970.5232-6 WORK FOR OTHERS FUNDING AUTHORIZATION (DEC 2000)

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 Work for Others applicable to this contract.

143 DEAR 970.5232-7 FINANCIAL MANAGEMENT SYSTEM (DEC 2000)

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

144 DEAR 970.5232-8 INTEGRATED ACCOUNTING (DEC 2000)

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

145 DEAR 970.5236-1 GOVERNMENT FACILITY SUBCONTRACT APPROVAL (DEC 2000)

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

146 DEAR 970.5242-1 PENALTIES FOR UNALLOWABLE COSTS (AUG 2009)

- (a) Contractors which include unallowable cost in a submission for settlement for cost incurred, may be subject to penalties.
- (b) If, during the review of a submission for settlement of cost incurred, the Contracting Officer determines that the submission contains an expressly unallowable cost or a cost determined to be unallowable prior to the submission, the Contracting Officer shall assess a penalty.
- (c) Unallowable costs are either expressly unallowable or determined unallowable.
 - (1) An expressly unallowable cost is a particular item or type of cost which, under the express provisions of an applicable law, regulation, or this contract, is specifically named and stated to be unallowable.
 - (2) A cost determined unallowable is one which, for that Contractor—
 - (i) Was subject to a Contracting Officer's final decision and not appealed;

- (ii) The Civilian Board of Contract Appeals or a court has previously ruled as unallowable; or
 - (iii) Was mutually agreed to be unallowable.
- (d) If the Contracting Officer determines that a cost submitted by the Contractor in its submission for settlement of cost incurred is—
- (1) Expressly unallowable, then the Contracting Officer shall assess a penalty in an amount equal to the disallowed cost allocated to this contract plus interest on the paid portion of the disallowed cost. Interest shall be computed from the date of overpayment to the date of repayment using the interest rate specified by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97); or
 - (2) Determined unallowable, then the Contracting Officer shall assess a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.
- (e) The Contracting Officer may waive the penalty provisions when—
- (1) The Contractor withdraws the submission before the formal initiation of an audit of the submission and submits a revised submission;
 - (2) The amount of the unallowable costs allocated to covered contracts is \$10,000 or less; or
 - (3) The Contractor demonstrates to the Contracting Officer's satisfaction that—
 - (i) It has established appropriate policies, personnel training, and an internal control and review system that provides assurances that unallowable costs subject to penalties are precluded from the Contractor's submission for settlement of costs; and
 - (ii) The unallowable costs subject to the penalty were inadvertently incorporated into the submission.

147 DEAR 970.5243-1 CHANGES (DEC 2000)

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

- (b) Work to continue. Nothing contained in this clause shall excuse the Contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

**148 DEAR 970.5244-1 CONTRACTOR PURCHASING SYSTEM (JAN 2013)
(CLASS DEVIATIONS: AUG 2011, JUN 2013, MAR 2015) (NNSA CLASS
DEVIATION MAY 2016)**

- (a) *General.* The Contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause and 48 CFR subpart 970.44. The Contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to the Department of Energy (DOE) in accordance with 48 CFR 970.4401-1. The Contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The Contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the Contractor submit for approval any or all purchases under this contract. The Contractor shall not purchase any item or service, the purchase of which is expressly prohibited by the written direction of DOE, and shall use such special and directed sources as may be expressly required by the DOE Contracting Officer. DOE will conduct periodic appraisals of the Contractor's management of all facets of the purchasing function, including the Contractor's compliance with its approved system and methods. Such appraisals will be performed through the conduct of Contractor Purchasing System Reviews in accordance with 48 CFR subpart 44.3, or, when approved by the Contracting Officer, through the Contractor's participation in the conduct of the Balanced Scorecard performance measurement and performance management system. The Contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (y) of this clause.
- (b) *Acquisition of utility services.* Utility services shall be acquired in accordance with the requirements of 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 \$100,000, 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 \$35,000, but not greater than \$150,000, the Contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.
 - (4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.
- (g) *Buy American.* The Contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225-1 and 48 CFR 52.225-9. The Contractor shall forward determinations of non-availability of individual items to the DOE Contracting Officer for approval. Items in excess of \$500,000 require the prior concurrence of the Head of Contracting Activity. If, however, the Contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the Contractor to make determinations of non-availability for individual items valued at \$500,000 or less.
- (h) *Construction and Architect-Engineer Subcontracts.*
- (1) *Independent Estimates.* A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.
 - (2) *Specifications.* Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."
 - (3) *Prevention of Conflict of Interest.*

- (i) The Contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.
 - (ii) The Contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.
 - (iii) The Contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.
- (i) *Contractor-Affiliated Sources.* Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402-3.
 - (j) *Contractor-Subcontractor Relationship.* The obligations of the Contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the Contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the Contractor, and shall not bind or purport to bind the Government.
 - (k) *Government Property.* The Contractor shall establish and maintain a property management system that complies with criteria in 48 CFR 970.5245-1, Property, and 48 CFR 52.245-1, Government Property.
 - (l) *Indemnification.* Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement Executive.
 - (m) *Leasing of Motor Vehicles.* Contractors shall comply with 48 CFR subpart 8.11 and 48 CFR subpart 908.11.
 - (n) [Reserved]
 - (o) *Management, Acquisition and Use of Information Resources.* Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.
 - (p) *Priorities, Allocations and Allotments.* Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.
 - (q) *Purchase of Special Items.* Purchase of the following items shall be in accordance with the following provisions of 48 CFR subpart 8.5, 48 CFR subpart 908.71, Federal Management Regulation 41 CFR part 102, and the Federal Property Management Regulation 41 CFR chapter 101:
 - (1) Motor vehicles—48 CFR 908.7101
 - (2) Aircraft—48 CFR 908.7102
 - (3) Security Cabinets—48 CFR 908.7106

- (4) Alcohol—48 CFR 908.7107
- (5) Helium—48 CFR subpart 8.5
- (6) Fuels and packaged petroleum products—48 CFR 908.7109
- (7) Coal—48 CFR 908.7110
- (8) Arms and Ammunition—48 CFR 908.7111
- (9) Heavy Water—48 CFR 908.7121(a)
- (10) Precious Metals—48 CFR 908.7121(b)
- (11) Lithium—48 CFR 908.7121(c)
- (12) Products and services of the blind and severely handicapped—41 CFR 101-26.701
- (13) Products made in Federal penal and correctional institutions—41 CFR 101-26.702
- (r) *Purchase versus Lease Determinations.* Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease versus purchase determinations. Such determinations shall be made—
 - (1) At time of original acquisition;
 - (2) When lease renewals are being considered; and
 - (3) At other times as circumstances warrant.
- (s) *Quality Assurance.* Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.
- (t) *Setoff of Assigned Subcontractor Proceeds.* Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.
- (u) *Strategic and Critical Materials.* The Contractor may use strategic and critical materials in the National Defense Stockpile.
- (v) *Termination.* When subcontracts are terminated as a result of the termination of all or a portion of this contract, the Contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the Contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the Contracting Officer.
- (w) *Unclassified Controlled Nuclear Information.* Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR part 1017.
- (x) *Subcontract 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:
 - (1) Construction Wage Rate Requirements (formerly known as the Davis-Bacon Act) clauses prescribed in 48 CFR 22.407.

- (2) Foreign Travel clause prescribed in 48 CFR 952.247-70.
- (3) Counterintelligence clause prescribed in 48 CFR 970.0404-4(a).
- (4) Service Contract Labor Standards clauses prescribed in 48 CFR 22.1006.
- (5) State and local taxes clause prescribed in 48 CFR 970.2904-1.
- (6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).
- (7) Nondisplacement of Qualified Workers clause prescribed in 48 CFR 22.1207.
- (8) Service Contract Reporting clause prescribed in 48 CFR 4.1705.
- (9) Minimum Wages under Executive Order 13658 clause prescribed in 48 CFR 22.1906.
- (10) RESERVED
- (11) Paid Sick Leave under Executive Order 13706 clause prescribed in 48 CFR 22.2110
- (12) Rights to Proposal Data (Technical) clause prescribed in 48 CFR 27.409.1
- (13) Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (formerly known as the Walsh-Healy Public Contracts Act) clauses prescribed in 48 CFR 22.610.
- (14) Patent Indemnity clause prescribed in 48 CFR 27.201.2(c).

(y) *Legal Services.* Contractor purchases of litigation and other legal services are subject to the requirements in 10 CFR part 719 and the requirements of this clause.

(End of Clause)

149 DEAR 970.5245-1 PROPERTY (Jan 2013)

- (a) Furnishing of Government property. The Government reserves the right to furnish any property or services required for the performance of the work under this contract.
- (b) Title to property. Except as otherwise provided by the Contracting Officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Contracting Officer shall direct. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the Contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.
- (c) Identification. To the extent directed by the Contracting Officer, the Contractor shall identify Government property coming into the Contractor's possession or custody, by marking and segregating in such a way, satisfactory to the Contracting Officer, as shall indicate its ownership by the Government.

- (d) Disposition. The Contractor shall make such disposition of Government property which has come into the possession or custody of the Contractor under this contract as the Contracting Officer may direct during the progress of the work or upon completion or termination of this contract. The Contractor may, upon such terms and conditions as the Contracting Officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Contracting Officer and the Contractor as the fair value thereof. The amount received by the Contractor as the result of any disposition, or the agreed fair value of any such property acquired by the Contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Government, as the Contracting Officer may direct. Upon completion of the work or the termination of this contract, the Contractor shall render an accounting, as prescribed by the Contracting Officer, of all government property which had come into the possession or custody of the Contractor under this contract.
- (e) Protection of government property-management of high-risk property and classified materials.
- (1) The Contractor shall take all reasonable precautions, and such other actions as may be directed by the Contracting Officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the Contractor's possession or custody.
 - (2) In addition, the Contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management Regulations (41 CFR chapter 101), the Department of Energy (DOE) Property Management Regulations (41 CFR chapter 109), and other applicable Regulations.
 - (3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.
- (f) Risk of loss of Government property.
- (1) (i) The Contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following—
 - (A) Willful misconduct or lack of good faith on the part of the Contractor's managerial personnel;
 - (B) Failure of the Contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer to safeguard such property under paragraph (e) of this clause; or
 - (C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.

- (ii) If, after an initial review of the facts, the Contracting Officer informs the Contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Contractor to show that the Contractor should not be required to compensate the government for the loss, destruction, or damage.
- (2) In the event that the Contractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the Contractor's compensation to the Government shall be determined as follows:
 - (i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.
 - (ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.
- (3) The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.
- (g) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the Contractor with a value above the threshold set out in the Contractor's approved property management system, the Contractor—
 - (1) Shall immediately inform the Contracting Officer of the occasion and extent thereof,
 - (2) Shall take all reasonable steps to protect the property remaining, and
 - (3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the Contracting Officer. The Contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.
- (h) Government property for Government use only. Government property shall be used only for the performance of this contract.
- (i) Property Management.
 - (1) Property Management System.
 - (i) The Contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The Contractor's property management system shall be submitted to the Contracting Officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management Regulations and Department of Energy Property

Management Regulations, and such directives or instructions which the Contracting Officer may from time to time prescribe.

- (ii) In order for a property management system to be approved, it must provide for—
 - (A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;
 - (B) [Reserved];
 - (C) Full integration with the Contractor's other administrative and financial systems; and
 - (D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.
- (iii) Approval of the Contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.
- (2) Property Inventory. (i) Unless otherwise directed by the Contracting Officer, the Contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.
 - (ii) If the Contractor is succeeding another contractor in the performance of this contract, the Contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The Contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.
- (j) The term "contractor's managerial personnel" as used in this clause means the Contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of—
 - (1) All or substantially all of the Contractor's business; or
 - (2) All or substantially all of the Contractor's operations at any one facility or separate location to which this contract is being performed; or
 - (3) A separate and complete major industrial operation in connection with the performance of this contract; or
 - (4) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or
 - (5) A separate and discrete major task or operation in connection with the performance of this contract.
- (k) The Contractor shall include this clause in all cost reimbursable subcontracts.

I-2 FAR 52.252-4 Alterations in Contract (Apr 1984)

Portions of this Contract are altered as follows:

**FAR 52.229-10 State of New Mexico Gross Receipts and Compensating Tax (Apr 2003),
as modified by DEAR 970.2904-1(a)**

Replace “Allowable Cost and Payment clause” with “Payments and Advances” in paragraph (b).

DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (JUL 2005)

Paragraph (c) is replaced with the following:

- (c) Contract completion or termination. In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered 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.
- (1) The following records identified in paragraph (b) above shall be delivered or otherwise maintained per the direction of the Contracting Officer:
 - (i) employee concerns records;
 - (ii) records generated during other employee related investigations conducted under an expectation of confidentiality.

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

SECTION J

LIST OF ATTACHMENTS

APPENDIX A – ADVANCE UNDERSTANDINGS HUMAN RESOURCES FOR PROFIT CONTRACTORS

APPENDIX B - SUBCONTRACTING PLAN

APPENDIX C - LIST OF APPLICABLE LAWS, REGULATIONS, AND DOE DIRECTIVES

APPENDIX D - CORPORATE PARENT PROMISES AND COMMITMENTS

APPENDIX E – (RESERVED)

APPENDIX F - KEY PERSONNEL

APPENDIX G - CONTRACTOR’S TRANSITION PLAN

APPENDIX H - SPECIAL FINANCIAL INSTITUTION AGREEMENT FOR USE WITH THE PAYMENTS-CLEARED FINANCING ARRANGEMENTS

APPENDIX I - DIVERSITY PLAN

APPENDIX J – PARENT ORGANIZATION OVERSIGHT PLAN

National Security Technologies, LLC (NSTec)

**SECTION J
APPENDIX A**

ADVANCE UNDERSTANDINGS

HUMAN RESOURCES FOR PROFIT CONTRACTORS

(March 2017)

Modification 311

The purpose of this modification is to update Section I – Contract Clauses, Appendix A – Advance Understandings Human Resources for Profit Contractors, and Appendix C – List of Applicable Laws, Regulations, and DOE Directives as set forth in Attachment 1.

Modification 274

Appendix A - Advance Understandings - Human Resources For-Profit Contractors, Section IV - Employee Benefits Programs, Paragraph E - Recreation and Employee Morale is modified by deleting subparagraph 1 and substituting the following text in lieu thereof.

Modification 174

Part III – List of Documents, Exhibits, and Other Attachments, Section J – List of Attachments, Appendix A – Advance Understandings Human Resources for Profit Contractors, is modified by deleting the text in its entirety and substituting the text set forth in Attachment 2 to this modification

Modification 137

Appendix A – Advance Understandings – Human Resources For-Profit Contractors, Section III – Compensation, Paragraph C – Individual Compensation Actions, is modified by deleting “Director, Mission Support Services and Performance Assurance” and adding “Director, Enterprise Resources”.

Appendix A – Advance Understandings – Human Resources For-Profit Contractors, is modified by deleting the text in Section X. – Recruitment, Paragraph F – Special Employment Programs, and substituting the following text in lieu thereof:

Modification 121

Appendix A – Advance Understandings – Human Resources For-Profit Contractors, is modified by deleting the text in section III, D.1, Compensation, Other Pay Programs, Employee bonus Award Program, and substituting the following text in lieu thereof.

Modification Number 110
Modification Number M041

Contract No. DE-AC52-06NA25946

Paragraph II, 1., (DEFINITIONS, Accredited Services), is modified by adding language the following language as the second paragraph of the definition.

Paragraph III.C., (COMPENSATION, Individual Compensation Actions), is modified by deleting the current text in its entirety and substituting the following text in lieu thereof.

Paragraph III.D.2.d (OTHER PAY, Pay For Time Not Worked, Bereavement), is modified by deleting the current text of subparagraph (3) in its entirety and substituting the following text in lieu thereof.

Paragraph III.E.10 (OTHER PAY, Pay in Addition to Base Pay, Subsistence Allowances), is modified by deleting the current text of subparagraph e. in its entirety and substituting the following text in lieu thereof.

Part III, List of Documents, Exhibits, and Other Attachments, Appendix A, Advance Understandings – Human Resources for Profit Contractors, is modified as set forth below.

Paragraph II, Definitions

Paragraph III, C. Compensation, Individual Compensation Actions

Paragraph III, E.2 Compensation, Pay in Addition to Base Pay, Shift Differentials

Paragraph III, E.10 Compensation, Pay in Addition to Base Pay, Subsistence Allowance

**Paragraph III, E.21 Compensation, Pay in Addition to Base Pay, Device Assembly Facility
(DAF) Radiation Control Technicians (RCTs)**

TABLE OF CONTENTS

I.	INTRODUCTION	7
II.	DEFINITIONS	7
III.	COMPENSATION	10
	A.– C. RESERVED.....	10
	D. Other Pay Programs.....	10
	1.Employee Bonus Award Program.....	10
	2.Pay for Time Not Worked.....	10
	a.Paid Time Off (PTO).....	10
	b.Sick Leave Savings Account.....	11
	c.Holidays.....	12
	d.Bereavement Leave	13
	e.Jury/Witness Duty	13
	f.Paid Absences Due to Emergency Conditions	13
	g.Time Off for Voting	14
	h.Grievances and Arbitration Leave.....	14
	i.Workers Compensation	14
	j.Military Leave	14
	k.Defense of Employees Involved in Work-Related Claims and Legal Actions	15
	l.Administrative Investigative Leave	15
	E. Pay in Addition to Base Pay	16
	1. Overtime	16
	2.Shift Differentials.....	18
	3.Call-In Pay	18
	4.Temporary Job Assignments.....	19
	5.Flight Pay Premium.....	19
	6.Hazard Premium.....	19
	7.Re-Entry Premium (Tunnel/Underground).....	19
	8.Lead Differential/Work Direction Differential	19
	9.Reporting Pay and Partial Shift Work	20
	10.Subsistence Allowances.....	20
	11.Retention Bonus.....	21

12.RESERVED.....	21
13.Personnel Borrowed	21
14.NSTec Personnel Loaned.....	21
15.NSTec Personnel Loaned to Outside Organizations.....	21
16.Commuting Benefits.....	22
17.Evacuation Pay.....	22
18.Death Benefit	22
19.Emergency Response Duty Pay.....	23
20.Pay During Deployment	24
21.Device Assembly Facility (DAF) Duty Officer, DAF Operations and DAF Radiation Control Technicians (RCTs)	24
F. Certification Pay.....	24
G. Site Allowance	24
H. Location Pay for Temporary Assignments.....	24
I. Severance Pay - Nonbargaining Employees	24
IV. EMPLOYEE BENEFITS PROGRAMS.....	25
A. RESERVED.....	25
B. Medical Benefits Program for Employees Affected by a Reduction in Employment.....	25
1.The cost for continuation of medical coverage for Contractor employees who have been voluntarily or involuntarily separated from employment in connection with a work force reduction will be reimbursable provided the employee was:.....	25
a. Eligible for medical insurance coverage under the Contractor's plan at the time of separation from employment; and.....	25
b. Not eligible for coverage under another employer's group health plan or under Medicare since the date of separation.....	25
2. Employee premiums for this program are as follows:	25
C. RESERVED.....	25
D. Medical Facilities and Health Services.....	25
E. Recreation and Employee Morale	26
F. Employee Education Training Assistance Program (EETAP).....	26
G. Unpaid Leaves	27
V. RETIREMENT PLANS – RESERVED.....	27
VI. MISCELLANEOUS	27

A.	Safety Programs	27
B.	Food Services, Housing, and Camp Facilities.....	27
C.	Substance Abuse Program	27
D.	Employee Assistance Programs	27
E.	Health Club Memberships	28
VII.	TRAVEL	28
VIII.	RELOCATION.....	28
IX.	TEMPORARY ASSIGNMENTS	29
X.	RECRUITMENT	29
A.	Recruiting Costs	29
B.	State and Nonprofit (No-fee) Minority Agencies.....	29
C.	Other Recruiting Methods	29
D.	Physical Examinations.....	30
E.	Pre-employment Verification Standards.....	30
F.	Special Employment Programs	30

I. INTRODUCTION

These advance understandings set forth those Contractor Human Resource Management policies and related expenses that have cost implications under the contract, and identifies those costs deemed reasonable and allowable for reimbursement when incurred in the performance of the Contract work. Only those items of personnel costs and related expenses that are set forth herein or specifically referenced in these advance understandings are allowable costs by advance understanding under this Contract. Nothing in these advance understandings is intended to alter the terms and conditions of any collective bargaining agreement.

The Contractor shall select, manage, and direct the work force. The Contractor shall use effective management review procedures and internal controls to assure that areas requiring prior approval of the NNSA Contracting Officer or designee are reviewed and approved prior to incurrence of costs.

Either party may request that these advance understandings be revised and the parties agree to give consideration in good faith to any such request. Revisions to the advance understandings shall be accomplished by executing a contract modification.

These advance understandings are adopted for the exclusive benefit and convenience of the parties hereto, and nothing contained herein shall be construed as conferring any right or benefit upon past, present, or future employees of the Contractor, or upon any other third party.

The Contractor shall promptly furnish all reports and information required or otherwise indicated in these advance understandings to the Contracting Officer or designee.

The Contractor will, in accordance with its commitment to excellence and its philosophy of continuous improvement, meet performance objectives under best practices in the design, implementation, and administration of its Human Resource Management Programs. For purposes of evaluating work under the contract for Contractor administration of Human Resource Management Programs, NNSA shall consider the degree to which the Contractor has achieved best business practices defined by performance objectives.

II. DEFINITIONS

1. Accredited Service.

- a. Employees who transfer directly to NSTec from the predecessor contractor will retain the site service date and continuous service date recognized by the predecessor contractor. Employees who are hired by NSTec with predecessor contractor service will be given credit for NNSA site service for benefit purposes, if there has not been a break in service longer than three years. Vested and credited service in the Thrift Plan and Pension Plan are subject to ERISA service rules.
- b. Transfers from parent companies:
 - i. *Prior to January 1, 2013*, NSTec employees transferring directly from Northrop Grumman, AECOM, CH2M Hill, or Nuclear Fuel Services will retain the continuous or credited service date recognized by the NSTec parent companies from which they transfer for the purpose of eligibility for benefits, including service awards, PTO, and 401(k) and pension plan vesting.
 - ii. *After January 1, 2013*, NSTec employees transferring directly from Northrop Grumman, AECOM, CH2M Hill, or Nuclear Fuel Services will retain the

continuous or credited service date recognized by the NSTec parent companies from which they transfer for the following purposes:

1. Service with parent organization not under DOE or NNSA M&O or Site Management contract: PTO eligibility and accrual only.
2. Service with parent organization under DOE or NNSA M&O or Site Management contract: PTO eligibility and accrual; eligibility for leaves of absence; eligibility for vesting and employer contributions to market-based retirement plans (but not for determination of benefit); eligibility for retiree medical, dental, and life insurance benefits (when the individual worked at least the 5 years prior to retirement under DOE or NNSA M&O or facilities management cost reimbursement contracts); eligibility and/or determination of benefit for long- and short-term disability; and determination of severance benefits (for service for which severance has not already been paid).
 - iii. Employees transferring directly from The Babcock & Wilcox Company without prior Nuclear Fuel Services service will be credited with continuous service as of January 5, 2009 (the date The Babcock & Wilcox Company acquired Nuclear Fuel Services), or their actual service date as established by Babcock & Wilcox, whichever is later. Eligibility for benefits based on that credited service date will be in accordance with paragraph ii. above.
2. **Bargaining Unit Employees (Union Employees)**. Employees whose wages, hours of work, and working conditions have been negotiated into labor contracts.
3. **Base Pay**. The compensation of an exempt or non-exempt employee, exclusive of premium pay or other type of compensation. The base pay is expressed as an hourly, weekly, or annual rate.
4. **Basic Workweek** - Nonbargaining employees. A 40-hour workweek consisting of five consecutive basic workdays of eight hours each.
5. **Casual Employee**. Employment status of an employee hired to provide manpower when temporary employees are needed for a specific project or to respond to an immediate need. Casual employees are called to work when needed and work as many hours per week as necessary. All hours worked will be compensated as non-exempt nonbargaining employees. Casual employees may work for NSTec a maximum of 900 hours per calendar year. Any casual employee who works less than 40 hours in a nine-month period may be administratively terminated. Casual employees are covered by legally required benefits, but do not receive or participate in any other type of employee benefit program, group insurance plans, or paid absences. Casual employees will not be eligible to receive benefits provided under the Defense Authorization Act, Section 3161, upon termination.
6. **Casual Overtime**. Work in excess of the basic workweek that cannot be scheduled in advance.
7. **CFR**. Code of Federal Regulations

8. **Compensation Increase Plan (CIP)**. A plan for establishing need and specifying distribution of maximum dollar amounts and/or percentage of base payroll on an annualized basis, to be allocated to employee groups for base pay increases or lump sum payments during a pay year. The amounts approved are for granting merit, promotion, adjustment, and reclassification increases.
9. **Compressed Workweek**. A work period designed to allow employees to fulfill work requirements in fewer days by increasing the number of hours worked in a single workday. A compressed workweek is expressed as 4/10 (four consecutive work days of 10 hours each to total 40 hours worked in a one-week period resulting in three consecutive days off during each workweek) or 9/80 (nine work days totaling 80 hours worked in a two-week period resulting in two consecutive days off the first week and three consecutive days off the second week).
10. **Contractor**. Refers to National Security Technologies, LLC (NSTec). The responsibilities and authorities specified in this Appendix for the "Contractor" shall be exercised by the General Manager of NSTec or his authorized representative.
11. **Exempt Employee**. Executive, administrative and professional employees who are exempt from certain provisions of the Fair Labor Standards Act (FLSA).
12. **Full-Time**. Employment status of an employee regularly scheduled to work 40 or more hours per workweek.
- 12.b. **Furlough**. The period of time in which an employee is placed in non-pay status because of lack of work, lack of funds, or other non-disciplinary reasons. Furloughs must be more than 40 consecutive work hours and cannot exceed 60 calendar days in a rolling 12-month period.
13. **Incentive**. A reward, financial or otherwise, that compensates the worker(s) for high and/or continued performance above standards. An incentive also is a motivating influence to induce accomplishment or performance above normal.
14. **Job Worth Hierarchy**. A ranking of jobs within an organization by relative value to the organization for pay purposes.
15. **Merit Increase**. An adjustment to individual salary based on performance ranking.
16. **Non-exempt Nonbargaining Employees**. Employees who are subject to minimum wage and overtime pay provisions of the Fair Labor Standards Act, and who are not covered by a collective bargaining agreement.
17. **Overtime Pay**. Total amount of pay including base pay portion for work beyond 40 hours in a workweek.
18. **Part-Time**. Employment status of an employee regularly scheduled to work less than 40 hours per workweek. Employees in this status are considered non-exempt for overtime purposes.
19. **Promotion**. The assignment of an employee to a job of greater value to the organization. This assignment is sometimes recognized by a higher job classification or level.

20. **Salary Range.** The range of pay rates, from minimum to maximum, set for a level or job classification.
21. **Special Adjustment.** An increase to an employee's base pay due to internal or external equity considerations.
22. **Termination.** When an employee quits, retires, dies, or is discharged, affected by a reduction-in-force, or removed from the payroll because of disability (as distinguished from disability absence where the employee is not removed from the payroll).

III. COMPENSATION

A. – C. RESERVED

D. Other Pay Programs

The following pay policy items are allowable costs and require NNSA approval within prescribed parameters. Among those costs are:

1. Employee Bonus Award Program

- a. The Contractor shall submit for NNSA Contracting Officer or designee approval prior to implementing an employee bonus award program that aligns to the missions and objectives of the NNSA and does not exceed 1.5% of payroll.
- b. Additional Bonus for Non-Key Personnel. The contractor may provide one-time non-base lump sum payments as a form of bonus to non-key personnel in accordance with the cost reduction clause (DEAR 970.5215-4 – NNSA Deviation dated March 2011) from resulted shared savings earned and negotiated cost reduction proposals.

2. Pay for Time Not Worked

a. Paid Time Off (PTO).

PTO is provided to eligible employees to be used as they wish, i.e., for vacation, sick leave, personal reasons, or religious observances. With the exception of illness, PTO is to be scheduled in advance and mutually agreed upon by the supervisor and the employee after taking work requirements into consideration.

(1) Eligibility

Salaried employees are eligible to use PTO as it accrues. No minimum length of service is required. Employees in casual status do not accrue PTO.

Accredited Service Requirement	Annual Accrual	Max. Accrual *
*From Accredited Service Date		
Until 5th anniversary of that date	120 Hours	480 Hours
*From 5th anniversary date		
Until 20th anniversary date	160 Hours	640 Hours
*From 20th anniversary date forward	200 Hours	800 Hours

* When an employee reaches the maximum accrual, no more PTO is accrued until time is charged to PTO and the hours go below the maximum. Employees deployed on an emergency response team (as listed in paragraph III.F.19.b) will be allowed to continue accruing PTO over the maximum for up to 4 months after their return from deployment.

- (2) Part-time employees accrue PTO on a prorated basis.
- (3) Employees will continue to accrue PTO during all paid absences (except when using donated PTO).
- (4) Employees will not accrue PTO while in any unpaid employment status for a full workweek.
- (5) Use of PTO must be approved by supervisors authorized to sign time records. PTO is used by employees in increments of one-half hour or more.
- (6) Approved holidays occurring during PTO will not be counted against PTO accounts.
- (7) Group insurance coverage will remain in force and premium payments will continue to be apportioned between employer and employee on the same basis as during active work time. Participation in the retirement savings plan will continue and contributions will be based on actual eligible earnings while on PTO.
- (8) If an employee is disabled and chooses to use PTO, it can be taken in up to full work day increments and paid in addition to short-term or long-term disability benefits, or integrated with workers compensation payments (see paragraph III.E.2.i following).
- (9) Upon termination or transfer to an NSTec affiliate (Northrop Grumman, AECOM, CH2M Hill, or Nuclear Fuel Services), the employee's unused PTO funds are transferred to that entity or paid off. The funds associated with this transfer or cash out are reimbursable under this Contract.
- (10) Employees can donate accrued PTO to fellow employees who have exhausted all accrued PTO and are undergoing either a family medical or personal medical crisis, including other special emergencies, as approved by the manager of HR.

b. Sick Leave Savings Account

- (1) Sick leave savings account balances effective 7/1/06 will remain.
- (2) For rehires with a break in service of three years or less, unused sick leave that was accrued at termination will be credited to the employee's sick leave savings account.
- (3) The sick leave savings account is supplemental to other benefits. It is not a vested benefit to which employees are entitled upon termination or reclassification from salaried to casual status. Consequently, the sick leave savings account will not be paid off upon termination.

c. Holidays

- (1) Eligible employees will be granted 80 hours of holiday pay each calendar year for the following holidays:

New Year's Day	Labor Day
Martin Luther King Day	Veterans Day
Presidents' Day	Thanksgiving Day
Memorial Day	Day after Thanksgiving Day
Independence Day	Christmas Day

- (2) When recognized holidays fall on a Saturday, the preceding Friday will be recognized as the holiday. When recognized holidays fall on a Sunday, they will be observed the following Monday.
- (3) For those employees working alternate work schedules/hours, a specific schedule will be established each calendar year.
- (4) Thirty days prior to the end of each calendar year, the Contractor will notify the NNSA Contracting Officer of the holidays to be observed.
- (5) To be eligible for holiday pay, the employee must be in paid status on the workday either preceding or following the holiday. No pay will be granted for a holiday that falls on the day preceding the date of employment, nor for a holiday that falls after the last day worked.
- (6) If a scheduled holiday occurs when an employee is on an approved paid absence (e.g., PTO, jury duty, etc), the employee is entitled to holiday pay and no charge is made against their PTO.

d. Bereavement Leave

- (1) In connection with a death in the immediate family, a bereavement leave of up to three days with pay is granted with time record signature approval. No minimum length of service is required.
- (2) The paid leave can be used at the time of the death or within a reasonable period following the death.
- (3) "Immediate family" is defined to include the following:
 - A. Spouse or registered domestic partner
 - B. Mother or father, mother-in-law or father-in-law, stepmother or stepfather, or foster mother or foster father
 - C. Son or daughter, son-in-law or daughter-in-law, stepson or stepdaughter, or foster son or foster daughter
 - D. Brother or sister, brother-in-law or sister-in-law, stepbrother or stepsister, or foster brother or foster sister
 - E. Grandparents or spouse's or registered domestic partner's grandparents
 - F. Grandchildren or spouse's or registered domestic partner's grandchildren

For bereavement leave, this definition is not limited to an Employee's natural or legal immediate family, and in the absence of a natural or legal relationship includes those persons considered by family, friends, and the community to bear such a relationship to the Employee, including a legal guardian.

e. Jury/Witness Duty

- (1) Employees who have been called to be selected or to serve on a jury impaneled by a civil authority, or who have been called to testify as witnesses in legal proceedings to which the employee is not a party either voluntarily or under subpoena, will be granted time off with pay. Time off with pay will not exceed the number of hours in their scheduled workday. Verification of an employee's attendance at court is required.
- (2) Compensation of any type received by the employee for the performance of court duty, excluding subsistence or travel allowances, shall be remitted to the Contractor by the employee.

f. Paid Absences Due to Emergency Conditions

- (1) The Contractor's senior officer or manager assigned at a location has the responsibility to decide whether a natural or civil emergency condition exists to the extent it prevents employees from reporting to work, or requires that they leave the work location during scheduled work hours.
- (2) When normal attendance requirements are waived or modified due to emergency situations, employees will be paid for the hours of excused absence at their base pay rate not to exceed the number of hours in their standard workday.

- (3) Natural emergency conditions include, but are not limited to, extreme weather conditions, utility failures, and life-threatening accidents. Civil emergencies include riots, demonstrations, and bomb threats. This policy is to be used in short-term situations and would not necessarily apply in the event of major catastrophes which might cause the disruption of operations for an extended period of time.

g. Time Off for Voting

The Contractor can grant an employee time off with pay for purposes of voting in a duly constituted election in accordance with applicable state laws.

h. Grievances and Arbitration Leave

A union steward is allowed time off with pay to perform the functions required of him/her in any grievance or arbitration proceeding. An employee called by the Contractor in such proceedings shall be paid for time lost.

i. Workers Compensation

- (1) The Contractor pays an employee "injury time" for absences from work as the result of a job-incurred injury or illness at 100 percent of base pay; unless/until the employee receives statutory workers compensation benefits. When the employee receives statutory workers compensation benefits, the Contractor supplements these benefits with "injury time" up to 75 percent of base pay, not to exceed six (6) months or 26 weeks from the date of injury. Once an employee qualifies for statutory workers' compensation benefits, injury time paid at 100 percent will be adjusted retroactively to the 75 percent level as a supplement to the statutory benefit.
- (2) Employees may choose to supplement statutory workers' compensation benefits, including "injury time," up to 100 percent of base pay with their sick leave savings or PTO. The sick leave savings account can be used on the first day of absence if the absence is the result of a work-related injury (as defined by applicable Workers Compensation regulations). In such cases, payments to the employee from the sick leave savings account will be reduced by the amount of Workers Compensation benefits for which the employee is eligible, even if the employee fails to file a Workers Compensation claim.

j. Military Leave

- (1) Employees who are members of the armed forces of the United States or National Guard, and who have short-term military obligations for training purposes or civil emergencies will be granted 15 working days of leave per fiscal year to satisfy their obligations. The amount of pay received from NSTec during such leave is the difference, if any, between the employee's base pay at NSTec and the employee's military base pay.
- (2) Employees called to active military duty under presidential or congressional order, will receive up to one-half of their base rate of pay for at least 180 days after their call to active duty. Employees may use earned and/or accrued PTO to

extend this 180-day period. In no instance will Contractor payments of salaries or wages and pay received for active military duty exceed employee's base pay rate earned prior to the call to active duty. For these purposes, active duty pay includes base pay, all specialty pay, and all allowances except housing, subsistence, travel, and uniform allowances. Employees will receive enrolled benefits for dependents for a period of 180 days that can be extended by earned and or accrued PTO. Employees will continue to accrue credited service for pension during the 180-day period.

k. Defense of Employees Involved in Work-Related Claims and Legal Actions

(This provision is intended to clarify how the vicarious liability of the Contractor for the acts of its employees will be administered. It is not intended to alter the parties' rights or responsibilities with respect to allowable costs or avoidable costs determinations.)

- (1) If a claim or legal action is brought against an employee as the result of the employee's conduct while performing duties under this contract and within the employee's scope of employment, the Contractor is allowed the cost of defending the employee, including appeals and cost of any judgment; provided, however, that the prior approval of the NNSA Contracting Officer or designee and the consent of the employee to be defended shall be obtained before any such defense is undertaken.
- (2) The provisions of the contract clause entitled "Litigation and Claims" shall have the same application to claims and legal actions against employees under this section as it has to those claims and legal actions which are brought directly against the Contractor. Before costs of any retained legal counsel is allowed, the selection of such counsel must have the concurrence of the NNSA Contracting Officer or designee.
- (3) When involved in any claim or legal action covered by this section, an employee is, with the prior approval of the NNSA Contracting Officer or designee be allowed time off with base pay on scheduled work days for consultation with counsel, trial attendance, and such other matters as are reasonably incident to the claim or legal action.

l. Administrative Investigative Leave

Employees removed from an NSTec work site while pending investigation are placed on paid administrative investigative leave until the investigation has been completed, subject to approval by the Director, Enterprise Resources.

E. Pay in Addition to Base Pay

1. Overtime

- a. Eligible employees will receive overtime pay for hours worked in excess of the basic workweek. All overtime hours worked are subject to federal, state, or local labor laws.

In some states, such as California, the wage and hour laws on overtime is more stringent than the federal regulations. In such cases, the state laws take precedence over federal laws.

Authorized paid absences (PTO, Sick Leave Savings, Holidays, etc.) taken during a workweek will not be counted as time worked for purposes of computing overtime pay for the scheduled work day or workweek.

- b. Exempt Employees

(1) Employees Eligible for Straight-Time Overtime

Employees in the following job groups and levels can be paid overtime at their base pay rate when a significant amount of overtime in excess of the regularly scheduled 40-hour workweek is scheduled, properly documented, and approved by the employee's immediate manager/supervisor in advance. Overtime will not be approved for casual overtime required to fulfill their regular duties and responsibilities.

JOB GROUP	LEVEL(S)	JOB GROUP	LEVEL(S)
Management	I, II	Project & Business Management	I
Scientists & Engineers	II, III, IV	Technical Support	VI
Technical Professionals	II, III, IV	IT Professionals	III, IV
Business Professionals	II, III, IV		

In addition, Management level III (titled Manager I) employees who are members of one of the emergency response teams listed in III.E.19 are eligible for straight-time overtime when the additional time worked is during the team's deployment for exercises or real-world events.

Employees in these levels who are required to work on a scheduled holiday will be paid at their base pay rate for all hours actually worked, in addition to the base pay for the holiday. Time worked on a holiday will be counted in the computation of the 40-hour workweek.

(2) Other Exempt Employees

Other exempt Employees are not typically paid overtime. Under unusual circumstances, employees can be paid overtime at the employee's base pay rate when a significant amount of overtime in excess of the regularly scheduled 40-hour workweek is scheduled and properly documented, including appropriate justification for an exception. The Contractor shall submit an overtime request for approval to the

NNSA Contracting Officer or designee for these employees. The NNSA Contracting Officer or designee will evaluate each request on a case-by-case basis.

Normally, employees who are required to work on a scheduled holiday receive pay only for the holiday. However, they receive pay at their base pay rate for hours actually worked in addition to the base pay for the holiday when the above overtime approvals have been granted.

c. Non-exempt Employees

Non-exempt employees will be paid one-and-one half times their base hourly rate for any hours worked in excess of 40 hours in a workweek. Any non-exempt employee who is required to work on a paid holiday will be paid one-and-one half times their base hourly rate, in addition to the base pay for the holiday. Time worked on a holiday will be counted in the computation of the 40-hour workweek.

d. Overtime Pay - Training Programs (non-exempt only)

Attendance at lectures, meetings, training programs and similar activities outside the employee's scheduled working hours should not be counted as time worked for overtime purposes if *all* of the following criteria are met:

- (1) Attendance is voluntary; and
- (2) The course, lecture or meeting is not directly related to the employee's job; and
- (3) The employee does not perform any productive work during attendance.

If any one of these criteria is not met, overtime must be paid.

When employees, on their own initiative, attend an independent school or college course after their scheduled work hours, the time is not hours worked for overtime purposes even if the course is job-related and the Contractor refunds the tuition and/or program cost.

e. Overtime pay for casual employees

Casual employees will be paid one-and-one-half times their base hourly rate for any hours worked in excess of 40 in the workweek. Those who are required to work on holidays will be paid base pay only.

f. Overtime for bargaining unit employees

Overtime pay for bargaining unit employees is specified in the labor agreements.

2. Shift Differentials

- a. Non-exempt employees, including part-time and casual employees, and exempt employees eligible to receive straight-time overtime will be paid shift differential payments of 10 percent of their base salaries when they are assigned to one of the following for at least three consecutive workdays:
 - (1) A scheduled work shift that begins three or more hours before the start of the established daytime work shift.
 - (2) A scheduled work shift that begins three or more hours after the start of the established daytime work shift.
- b. Eligible employees will be paid the shift differential payment only for the days worked on other than an established daytime shift. The shift differential is not included in payment for paid absences such as PTO and holidays. Pay for such absences will be calculated on the base salary rate.
- c. Overtime pay on workdays when employees receive shift differential pay will be calculated using base salary plus shift differential.
- d. Shift differentials and Lead Man pay are allowable as specified by the Collective Bargaining Agreements.
- e. Non-exempt employees who are assigned to a shift without being given 48 hours' notice of assignment or shift change are paid one and one-half times their base pay hourly rate for that portion of the newly scheduled shift which does not coincide with the hours of the employee's former shift during the first 48 hours of the new shift.
- f. Non-exempt NSTec employees working at the NIF at LLNL will be paid 7.5% for working swing shift and 15% for owl shift. During all leaves with pay and holidays, eligible employees are paid at the shift differential rate applicable to the shifts they would otherwise have been scheduled to work. Overtime hours are paid at the applicable shift differential rates times one and one-half. When programmatic requirements necessitate a regular shift assignment for an extended period, exempt employees may be paid the same shift differentials if approved in advance by the NSTec President.

3. Call-In Pay

Non-exempt employees who are called in to work after having left their job site at the end of their regular shift to perform work before, but not continuous with, their regular shift are provided at least four hours' pay. Non-exempt employees who are assigned to a compressed workweek are paid a minimum of five hours of base pay. If no work is performed, the hours paid but not worked will be straight time, except on holidays when the applicable premium rate is paid. Only hours worked will count towards computing overtime.

4. Temporary Job Assignments

Non-exempt employees who are assigned temporarily, 90 days or less, to a lower job classification retain and are paid their regular rate for the period of assignment. Non-exempt employees who are assigned temporarily to a higher job classification are paid a twenty-five cent (\$.25) per hour premium or the minimum of the higher classification, whichever is higher, during the period of temporary assignment.

5. Flight Pay Premium

- a. Air crew members assigned to perform duties for a minimum of 30 minutes aboard diagnostic aircraft are paid a flight pay differential of 25 percent of their base pay for actual hours flown in the aircraft to the nearest hour. Flight crew members (pilots and mechanics) are not eligible for flight pay differential.
- b. Crew rest time for flight crew members is paid time if the required rest time would cause the individual to receive less than their normal base salary for that week.

6. Hazard Premium

- a. When nonbargaining employees are assigned to and do perform work on wooden poles or towers at a height of more than 40 feet, they shall be paid time and one-half their base pay for the actual time worked at such heights.
- b. When nonbargaining employees are assigned to and do perform work on wooden poles or towers at a height of more than 80 feet, they shall be paid double their base pay rate for the actual time worked at such heights.
- c. When nonbargaining employees are assigned to and do perform work in steel-cased drill holes at a depth in excess of 1,000 feet, they shall be paid at time and one-half their base pay rate for the actual time worked at such depths.
- d. The premium set forth above shall be computed and paid in increments of one hour.

7. Re-Entry Premium (Tunnel/Underground)

- a. Nonbargaining employees, while engaged in re-entry work and required by the Company to wear both full protective clothing (coveralls, booties, gloves, caps, etc.) and a full face respirator, shall receive a premium of one dollar (\$1.00) per hour above their base pay.
- b. If a nonbargaining employee engages in re-entry work during any portion of the workday, the employee shall receive the premium for the entire shift.

8. Lead Differential/Work Direction Differential

A non-exempt employee who is assigned to direct the work of other employees for a period of one workweek or longer receives seventy five cents (\$.75) per hour above his/her base pay for the actual hours worked in such a capacity. The Work Direction Differential is added to the employee's base pay for the purposes of computing overtime.

9. Reporting Pay and Partial Shift Work

Non-exempt employees are paid four hours of base pay (or five hours of base pay, if they work a compressed workweek) when they report for work on their assigned shift and are not put to work, except if no work is available by reason of inclement weather or other conditions beyond the control of the Contractor, or if the employee is discharged for cause or voluntarily terminates.

If put to work for a portion of their assigned shift, non-exempt employees are paid a minimum of eight hours or a maximum of their basic work day at their base pay rate, except if no work is available by reason of inclement weather or other conditions beyond the control of the Contractor, or if the employee is discharged for cause or voluntarily terminates.

10. Subsistence Allowances

- a. Employees assigned to report at Mercury will be paid at the rate of \$5.00 per day worked.
- b. Employees assigned to reporting points beyond Mercury will be paid at the rate of \$7.50 per day worked.
- c. Employees assigned to TTR will receive \$7.50 per day subsistence for travel to NTS or Las Vegas when required to return to TTR the same day. If required to stay overnight at NTS, the employee will receive \$7.50 subsistence instead of \$5.00.
- d. Employees assigned to Las Vegas will receive \$5.00 for each day worked in Mercury; and \$7.50 for each day worked at NTS areas beyond Mercury, at TTR, and Nevada Research and Development (NRDA). To be eligible for this subsistence payment, employees must either report to or return from work at NTS, NRDA, or TTR on their own time or using other than government furnished transportation unless required to stay overnight.
- e. Employees assigned to Las Vegas will receive \$5.00 for each day worked in Mercury; and \$7.50 for each day worked at NTS areas beyond Mercury, at TTR, and Nevada Research and Development (NRDA) in accordance with the following table:

When travel occurs	What vehicle is used	Subsistence?
Before start of normal workday	Any vehicle	Yes
During workday (both directions)	Government vehicle	No
During workday (both directions)	Personal vehicle (no government vehicle available)	Yes
During workday (both directions)	Personal vehicle by choice (government vehicle is available)	No
After end of normal workday	Any vehicle	Yes
Any time and required to spend the night at the site	Any vehicle	Yes

- f. TTR employees required to stay overnight in Las Vegas will be in official travel status.

- g. Nonbargaining employees who are required to work without a 12-hour break during a 24-hour period and who spend the night at the Nevada Test Site will receive \$10.00 per occasion meal allowance in addition to the above daily subsistence allowances.

11. Retention Bonus

When critical personnel are at risk of leaving the Contractor and their leaving would be to the detriment of a major project or program, the Contractor may request the Contracting Officer's approval of an appropriate retention bonus, separate from the annual CIP budget.

12. RESERVED

13. Personnel Borrowed

It is recognized that the technical and staffing requirements of the Contractor will vary during the performance of this Contract. The technical and staff support capabilities of the Contract and its affiliates were proposed and recognized in the competitive selection process. Therefore, the Contractor may obtain direct support from affiliates to meet technical and staffing requirements on an as-needed basis. The process and procedure for utilizing support from affiliates shall be approved by the Contracting Officer.

Services from approved Contractor affiliates will be at cost without additional fee or profit. Allowable cost will include direct costs and all allocable affiliate indirect costs in accordance with applicable DCAA cost principles and cost accounting standards. Temporary assignments of Contractor affiliate personnel to the NTS Site or other sites identified in this Contract shall bear indirect costs based upon a DCAA recommended/approved offsite rate that excludes home office facilities related costs. However, in the event a DCAA recommendation/approved offsite rate does not exist for a specific Contractor affiliate, the Contractor affiliate shall not be required to develop an offsite rate unless the temporary assignment exceeds 6 months.

Contractor affiliates providing such services and personnel shall perform the work in accordance with applicable terms and conditions of this Contract.

14. NSTec Personnel Loaned

The Contractor may loan, at no cost to the Government, individuals working under this Contract to other operations of the parent companies (Northrop Grumman, AECOM, CH2M Hill, and The Babcock & Wilcox Company) or their affiliates on a non-interference basis as determined by the Contractor. Loans longer than six months require Contracting Officer or designee approval.

The receiving organization will reimburse the Contractor for full costs plus NNSA address as appropriate. Travel costs of such loaned personnel will be the responsibility of the requesting company.

15. NSTec Personnel Loaned to Outside Organizations

With the prior approval of the NNSA Contracting Officer or designee, the Contractor can

temporarily assign NSTec employees to locations and organizations other than their assigned organization. Such assignments could be to federal, state, and local government, non-profit organizations, private sector partners, or other customers.

Such assignments must be in the best interest of the NNSA and the Contractor.

The term of these assignments will be determined to best meet the needs and obligations of the specific request but normally will be two years or less. Up to 100 percent of the cost of the assignment to the Contractor will be reimbursed, as provided in the approval letter.

Employees on temporary assignment will remain employees of NSTec, LLC.

16. Commuting Benefits

Contractor will provide non-taxable commuting benefits as defined by IRS guidelines for transportation passes to employees working in the Washington, D.C. area, remaining consistent with NNSA employees receiving commuting benefits in Washington, D.C.

17. Evacuation Pay

- a. An employee (except a non-exempt twenty-four (24) hour shift Fire Department employee) evacuated temporarily from the employee's assigned work site and for whom no work is provided, but whose services are further required in support of continuing operations, will be paid at his/her base hourly rate up to a maximum of ten hours per day, for all hours not worked and which the employee would have normally worked had he/she not been evacuated.
- b. If a non-exempt employee (except a non-exempt twenty-four (24) hour shift Fire Department employee) is in an evacuation status and a work status on the same day, the employee will be paid their base hourly rate for a combination of the two statuses up to the hours in their basic scheduled workweek, or for the actual hours worked, whichever is longer.
- c. Non-exempt twenty-four (24) hour shift Fire Department employees are paid at their regular scheduled rate of pay for all time that corresponds to their basic scheduled work day while in evacuation status. Should the employee work on a scheduled non-work day while in evacuation status, the employee will be compensated for all hours worked at the applicable rate of pay for the type of work performed.
- d. If no work is performed on the employee's scheduled non-work day while in evacuation status, no payment will be made for that day.

18. Death Benefit

- a. In the event of the death of a nonbargaining full time employee, the Contractor will pay the surviving spouse or other designated beneficiary, or if there is no surviving spouse or other designated beneficiary, will pay the estate of the deceased, a lump sum amount not to exceed four weeks at the employee's then-current base or

equivalent hourly rate as well as any earned and accrued PTO due.

- b. Upon the death of an employee while in travel status or on temporary duty assignment, the cost of preparation and transportation is allowable for the deceased employee, dependents of the deceased employee, and the personal effects of the deceased employee. This allowable cost will be from the place of travel assignment or temporary duty assignment to the place of the employee's permanent duty station or equivalent distance. The above is applicable providing the Contractor gave authorization for family members to accompany the employee on temporary duty assignment.

19. Emergency Response Duty Pay

- a. Non-exempt employees, exempt employees eligible for OTS, employees titled “Manager I,” and bargaining unit employees who are specifically authorized and scheduled to be available within a set number of hours for emergency response work outside their normal work hours are eligible to receive a flat-rate incentive payment of \$40 for each 24-hour period of coverage.
- b. Payment is limited to members of the following teams:

TEAM NAME (LOCATION)	TEAM MISSION
AMS Response Team (Andrews)	Aerial emergency response for nuclear or radiological incidents
AMS Response Team (Nellis)	Aerial emergency response for nuclear or radiological incidents
Consequence Management Home Team (CMHT)	Home team support for RSL and NNSA response team
Consequence Management Response Team (CMRT)	Emergency response team for nuclear or radiological incidents
Emergency Communications Network (ECN) Team (Forrestal DC)	Supports ECN for NNSA, Render Safe, and RSL personnel and applications
ECN Team (Nellis)	Supports ECN for NNSA, Render Safe, and RSL personnel and applications
Nuclear/Radiological Advisory Team (NRAT) (Andrews)	Pre-crisis team that supports NNSA operations
NRAT – West (Nellis)	Pre-crisis team that supports NNSA operations
Radiological Assistance Program – Region 0 (RAP0)	RAP regional response team assigned to the National Capital Region
Render Safe Support Team	Supports the JTOT and ARG missions based in Albuquerque, NM. On duty as needed.
RSL Home Team	Supports RSL and Render Safe Emergency Operations
Wildland Fire Support Team	Supports NSTec Fire & Rescue in fighting wildland fires during the fire season (could be from June through September – will vary by year)

- c. If a team is deployed for an exercise or real-world event, the flat-rate incentive payment will continue to be paid during the deployment.

- d. The flat-rate incentive payment will be taxable income and appropriate deductions, including voluntary 401(k) contributions will be taken. It will not be included in overtime rate calculations.

20. Pay During Deployment

- a. Employees who are eligible for duty pay receive pay for the time spent in transportation to and from deployment as a member of one of the teams listed in paragraph III.E.19.b for exercises or real-world responses. This provision does NOT apply to routine business travel.
- b. Pay status begins from the time the employee arrives at RSL-Nellis or RSL-Andrews and ends when the employee is released from duty for the day at the destination. The reverse applies for the return trip.
- c. Straight time or time-and-a-half is paid depending on the employee's job group and level and the hours worked during the current workweek.

21. Device Assembly Facility (DAF) Duty Officer, DAF Operations and DAF Radiation Control Technicians (RCTs)

- a. DAF Duty Officers or DAF Operators who are required to be on call and able to report within two hours are eligible to receive a flat-rate incentive payment of \$40 for each 24-hour period of coverage.
- b. RCTs who are required to be on call and able to report within two hours during warm standby conditions at the DAF are eligible to receive a flat-rate incentive payment of \$40 for each 24-hour period of coverage.
- c. The flat-rate incentive payment will be taxable income and appropriate deductions, will be taken. It will not be included in overtime rate calculations.

F. Certification Pay

Certification pay will require prior NNSA Contracting Officer or designee approval.

G. Site Allowance

Site allowances will be established with approval of the NNSA Contracting Officer or designee.

H. Location Pay for Temporary Assignments

Location pay for temporary assignments will be established, including amount of pay and the circumstances under which it is provided with approval of the Contracting Officer or designee.

I. Severance Pay - Nonbargaining Employees

- a. In the event of a Reduction in Employment (RIE), the Contractor will provide severance pay to all regular full-time employees and regular part-time employees on a

work schedule of at least 30 hours per week. Eligible employees with less than one year of accredited service will receive one-week base pay; eligible employees with more than one year of accredited service will receive one-week's pay per year of accredited service, to a maximum of 26 weeks' severance pay. Employees must complete at least six months of accredited service in their final year of employment to receive one week's severance pay for that year. Severance pay will not be given for any previous service where severance was paid by a Contractor or affiliate.

b. **RESERVED**

c. Employees who have been accepted for a voluntary RIE or who are impacted by a RIE and who are eligible for and subsequently elect retirement will not be denied severance pay. In the event NNSA approves a special one-time retirement incentive in connection with a work force reduction, the eligibility "window" for the retirement incentive will be closed before any voluntary or involuntary RIE designations are made. Employees electing a retirement incentive are not eligible for severance pay.

d. Severance pay is not counted as pay or service in calculating retirement benefits.

e. The term "severance pay" does not include incentives for employees who voluntarily separate or retire.

IV. EMPLOYEE BENEFITS PROGRAMS

A. RESERVED

B. Medical Benefits Program for Employees Affected by a Reduction in Employment

1. The cost for continuation of medical coverage for Contractor employees who have been voluntarily or involuntarily separated from employment in connection with a work force reduction will be reimbursable provided the employee was:

a. Eligible for medical insurance coverage under the Contractor's plan at the time of separation from employment; and

b. Not eligible for coverage under another employer's group health plan or under Medicare since the date of separation.

2. Employee premiums for this program are as follows:

First year: current active employee rate

Second year: 50 percent of appropriate COBRA rate

Third Year: 100 percent of appropriate COBRA rate

C. RESERVED

D. Medical Facilities and Health Services

1. The cost of providing periodic and termination physical examinations and associated medical services to employees will be allowed under a plan approved by the NNSA Contracting Officer or designee. The cost of associated medical services shall be limited

to immunization, inoculation, and emergency treatment, except as otherwise approved by the NNSA Contracting Officer or designee.

2. The reasonable costs of establishment and operation of job site medical facilities, air evacuation (military and civilian), and the reasonable costs of medical care with medical doctors on call twenty-four hours per day, seven days per week are allowable for employees. Services will be available when en route between established point of origin and the job site and while on official travel status or authorized leave.
3. Employees are paid at their base or equivalent hourly rate for time spent during regular working hours in receiving the above medical and health services when furnished or required by the Contractor.

E. Recreation and Employee Morale

1. The Contractor may contribute to recreational and morale-building programs the sum of twenty-three dollars times the number of full-time employees on the Contractor's payroll on April 1 and October 1 of each year. This includes activities such as participation in diversity events and other programs consistent with the allowable cost clause of this contract. Contractor will submit an annual Recreation and Employee Morale Plan for approval by the Contracting Officer or designee 30 days prior to the start of the fiscal year. This plan will include award programs to recognize service anniversaries and retirements, programs to improve work environments, and costs of a wellness program (limited to activities related to stress management, smoking cessation, exercise, nutrition, and weight loss).
2. The Contractor is authorized to maintain established programs such as employee counseling and in-house employee publications.

F. Employee Education Training Assistance Program (EETAP)

1. Nonbargaining employees who are scheduled for at least 30 hours per week and who are active or on medical/family leave on the course start date and through the completion of the course, are eligible.
2. Courses must be related to the employee's current position or to a probable future assignment in the Contractor's organization. In addition, these courses must be offered by an accredited institution of higher learning and approved before the employee enrolls in the course.
3. The Contractor will pay or reimburse for eligible costs, less financial assistance from other sources (grants, assistantships, fellowships, scholarships, VA assistance, etc.) when the employee achieves a grade of C or better, or "Pass" in a pass-fail course. The contractor will provide a maximum of \$5,000 per employee each fiscal year, unless written approval of the NNSA Contracting Officer or designee is obtained in advance. The employee must furnish records of course completion and eligible costs incurred, including the amount of any rebate on tuition or fees received from the institution, which will be deducted from the reimbursement or re-paid to the Contractor by the employee.
4. Eligible costs include tuition, required textbooks, applicable state and local taxes and required direct charges billed by the institution for instruction, such as laboratory fees,

initial registration fees, and health fees.

Ineligible costs include late charges, equipment, tools, general supplies, supplemental non-required textbooks, medical insurance, tuition for courses that are audited, and parking fees.

5. Employees must reimburse the Contractor if they do not successfully complete the course with a grade of C or better (or "Pass" in a pass-fail course).

G. Unpaid Leaves

The Contractor will comply with any legal requirement to offer such leaves as well as internal policies and procedures related to eligibility, length of leave, benefit eligibility, and premium payments. Employees will pay the active employee rate for benefit plans while on an approved unpaid leave; employees on Military Leave receive limited benefits.

V. RETIREMENT PLANS – RESERVED

VI. MISCELLANEOUS

A. Safety Programs

1. The cost of providing safety programs as required by the Department of Energy/NNSA or approved by the NNSA Contracting Officer or designee shall be allowed in connection with work performed under the Contract.
2. Personal protective equipment will be provided by the Contractor at no cost to those employees exposed to possible health and safety hazards arising from operational requirements.

B. Food Services, Housing, and Camp Facilities

The net cost to the Contractor of operating cafeterias, dining rooms, canteens, and providing food housing, laundry services, custodial and janitorial services, and camp facilities in connection with the performance of work under this Contract, and such other services that are required or approved by the NNSA Contracting Officer or designee shall be allowable cost to the Contract.

C. Substance Abuse Program

The Contractor shall submit to the NNSA Contracting Officer or designee for approval a substance abuse program consistent with the minimum requirements of 10 CFR Part 707, Workplace Substance Abuse Programs at DOE Sites.

D. Employee Assistance Programs

The Contractor shall submit to the NNSA Contracting Officer or designee for approval the program plans and budget for the following Employee Assistance Services: crises intervention, consultation, counseling and referral to address a range of medical, mental, emotional and personal problems of employees, particularly those that affect job

performance.

E. Health Club Memberships

The Contractor is authorized to contract with a health club to provide employees of NSTec, NFO, or other NFO contractors (including locations outside Nevada) the opportunity for low cost memberships. The cost of the “corporate” membership is allowable.

VII. TRAVEL

Travel costs shall be allowable to the extent that they are incurred in accordance with DEAR 970.3102-05-46 and FAR 31.205-46. Travel-related costs shall be reasonable and allowable to the extent they comply with the rules for per diem rates set forth in the Federal Travel Regulations in effect at the time of travel.

VIII. RELOCATION

Relocation expenses for en route travel, transportation of household goods, house hunting trips, temporary living, residence-related payments (home sale, home purchase, mortgage interest differential payments, rental differential payments, and costs of canceling an unexpired lease), and tax assistance shall be incurred in accordance with the provisions, limitations, and exclusions of FAR 31.205-35, except as noted below. Current FTR rates and methods of calculation will be used for those expenses left undefined in the FAR.

- A.** Relocation expenses are authorized when the new work location is more than 75 miles from the current work location, except changes in work location between the Las Vegas area and the Nevada Test Site.
- B.** Shipment of Autos, House Trailers and Mobile Homes
 - 1. Costs for shipment by freight forwarder of one auto for new hires, college hires, or transferring employees will be reimbursed with the following limitations:
 - a. The shipment is advantageous and cost effective to the government and the General Manager or designee approves shipment.
 - b. Vehicles must be in operating condition. Shipment of antique autos is not authorized regardless of operating condition.
 - c. Assignment location must be more than 500 miles from point of origin.
 - d. No reimbursement will be made for storage charges at point of origin or destination.
 - e. Transportation is limited to vehicles having a gross size for shipping purposes of not more than 20 measurement tons (800 cubic feet).

All necessary and customary expenses directly related to the transportation of a privately owned vehicle may be allowed, including crating and packing expenses, shipping charges, and port charges for readying the vehicle for shipment at port of embarkation and for use at port of debarkation.

When it is in the best interests of the government, transferring employees who travel by plane to their new location may ship two vehicles with the approval of the General Manager or designee.

2. Costs for the shipment of a single-unit house trailer or mobile home, moved by the employee or commercial carrier and used as the principal residence, will be reimbursed. The employee is responsible for the cost of insurance for valuation of the mobile home above the carriers' maximum liability, or charges designated in the tariffs as "Special Service."

C. Allowance for Miscellaneous Expenses

Employees buying, selling, or leasing a permanent residence at the new location will receive a lump sum of \$1,000 for other necessary and reasonable expenses normally incident to relocation. Up to a total of \$5,000 (including the \$1,000 lump sum) can be reimbursed upon presentation of receipts for eligible expenses (such as disconnecting and connecting household appliances; automobile registration; driver's license taxes; cutting and fitting rugs, draperies, and curtains; forfeited utility fees and deposits; and purchase of insurance against damage to or loss of personal property while in transit) for the full amount of reimbursement.

- D. Labor costs incurred during the relocation** of transferring employees during any work day travel period, based on an average of 300 miles per day, are allowable.

IX. TEMPORARY ASSIGNMENTS

Employees on an assignment at least 75 miles away from their normal work location that lasts longer than six months and less than 12 months are eligible for a Temporary Change of Station in accordance with the FTR.

X. RECRUITMENT

A. Recruiting Costs

The reasonable and necessary costs incurred for the recruitment of personnel will be allowed. Costs include, but are not necessarily limited to, advertising in newspapers and technical journals, preparation of recruiting materials, and travel for recruiting personnel and technical representative.

B. State and Nonprofit (No-fee) Minority Agencies

The Contractor will, to the maximum extent feasible, utilize the services of the local State and nonprofit (no-fee) Minority Agencies in the recruiting of personnel and will provide those agencies with current listings of job openings for which outside recruiting is being conducted.

C. Other Recruiting Methods

The Contractor can utilize employment agencies or employment consultants in the recruiting

of personnel and can travel to educational institutions, attend job fairs, or sponsor "Open Houses" in special recruitment areas and invite prospective employees whose skills are in short supply to the point of hire and/or permanent duty station for a pre-employment interview.

D. Physical Examinations

The reasonable costs of employment physical examinations for new hires, rehires, and employees returning to work after an absence of more than five days due to illness or injury, including substance abuse testing, are allowable.

E. Pre-employment Verification Standards

The reasonable costs of pre-employment personnel investigations are allowable. All costs associated with the processing of a security clearance where the contract requires the employee to have such clearance, are allowable.

F. Special Employment Programs

1. Cooperative Education Student Employment (co-op) Program

- a. Administration of a co-op program to recruit potential long-term technical, professional, or administrative employees will be in accordance with a plan on file with and approved by the Contracting Officer of designee.
- b. Co-op and summer student employees whose Contractor work locations are more than 100 miles from their schools are reimbursed for public transportation or automobile mileage for the most direct route. Reimbursement will not exceed the equivalent of least cost economy airfare. En route expenses and up to five days' settling-in expenses, up to the maximum per diem rate are authorized upon arrival at the work location.

2. Post Doctoral (Postdoc) Program

- a. Positions. Postdoc positions are limited-term regular, full-time positions. Hiring managers complete a Job Requisition that includes the job group, level, and job responsibilities. These positions are not included in the posting process.
- b. Duration. Participants can be employed for up to two (2) years, with the possibility of one (1) additional year, based on the organization's needs. The employment relationship remains "at-will," and can be terminated at any time by either party.
- c. Eligibility. In order to be considered for a Postdoc appointment, the candidate must be nominated and sponsored by an NSTec Senior Principal Scientist or Engineer, Distinguished Scientist or Engineer, manager, or director. Candidates may be considered for a Postdoc position within three (3) years of receiving the PhD.
- d. Benefits. Participants will be eligible for full-time benefits with the exception of the Employee Education Training Assistance Program (EETAP), relocation, and

severance pay when the employment relationship ends. Relocation benefits may be provided on a limited basis.

- e. In October, NSTec will provide the Contracting Officer with a summary of the Postdoc Program for the prior fiscal year.

Modification 333

The purpose of this modification is to incorporate the FY18 Small Business Contracting Plan. As such, Part III – List of Documents, Exhibits and Other Attachments, Appendix B – Subcontracting Plan, is modified by deleting the existing information and substituting the plan included as Attachment 1 to this modification.

Modification 299

Subcontracting Plan, is modified by deleting the existing information and substituting the plan included as Attachment 2 to this modification.

Modification 264

Subcontracting Plan, is modified by deleting the existing information and substituting the plan included as Attachment 2 to this modification

Modification 237

Subcontracting Plan, is modified by deleting the existing information and substituting the plan included as Attachment 3 to this modification

Modification 209

Appendix B – Subcontracting Plan, is modified by deleting the chart on page 13 and substituting the following chart in lieu thereof:

Modification 137

Appendix B – Subcontracting Plan, is modified by deleting the chart on page 13 and substituting the following chart in lieu thereof:

Modification 121

Part III, *List of Documents, Exhibits, and Other Attachments*, Section J, *List of Attachments*, Appendix B, *Subcontracting Plan*, is modified by deleting the existing plan and substituting the plan included as Attachment 2 to this modification.

Modification A024

Contract Number DE-AC52-06NA25946

PART III – SECTION J

APPENDIX B - SUBCONTRACTING PLAN

NATIONAL SECURITY TECHNOLOGIES LLC

**MASTER SUBCONTRACTING PLAN FOR SMALL BUSINESS, SMALL
DISADVANTAGED BUSINESS, WOMEN-OWNED SMALL BUSINESS,
HISTORICALLY UNDERUTILIZED BUSINESS (HUB) ZONE SMALL BUSINESS,
VETERAN-OWNED SMALL BUSINESS AND SERVICE-DISABLED VETERAN-
OWNED SMALL BUSINESS**

EFFECTIVE DATE: 01 OCTOBER 2017 TO 30 NOVEMBER 2017

TABLE OF CONTENTS

Contents

1.0 Introduction & Company Policy	3
1.1 Corporate Commitment	3
2.0 Definitions	3
3.0 Principal Supplies/Services to be Subcontracted [FAR 52.219-9 (d)(3)]	5
4.0 Goal Development	6
5.0 Identification and Development of Potential Sources	7
6.0 Utilization of Indirect Costs	8
7.0 Administration of the Master Subcontracting Plan	8
7.1 Duties of the Administrator	8
8.0 Efforts to Assure an Equitable Opportunity to Compete for Procurement Opportunities	8
9.0 Subcontracts Flow-down Provisions	10
10.0 Reports, Reviews, Studies and Surveys	10
11.0 Records Maintained to Comply with the Requirements of the Plan	10
11.1 Records	10
11.2 Outreach Efforts	11
11.3 In-House Training and Motivation	11
11.4 Assistance to Small Business Concerns	11
11.5 Misrepresentation	12
11.6 Effective Period of the Master Subcontracting Plan	12
INDIVIDUAL SUBCONTRACTING PLAN FOR NATIONAL SECURITY TECHNOLOGIES LLC	14
1.0 Direct And Indirect Goals Computations	14
2.0 Master Subcontracting Plan	15
3.0 Program Administrator:	16

1.0 Introduction & Company Policy

At National Security Technologies, LLC (NSTec) we have made a strong commitment regarding the utilization of Small Businesses (SB), Small Disadvantaged Businesses (SDB), Women-Owned Small Businesses (WOSB), HUB Zone Small Businesses (HUB), Veteran-Owned Small Businesses (VOSB) and Service-Disabled Veteran Owned Small Businesses (SDVOSB). This Master Plan details the methods and procedures as to how NSTec's parent companies, Northrop Grumman, AECOM, CH2M Hill, and Babcock & Wilcox, will implement not just the letter of current regulations, but the spirit behind it. Notwithstanding the requirement for the establishment and utilization of Small Businesses, it is the policy of NSTec to support all Small Business concerns where possible. This Plan is submitted in accordance with Sections 52.219-8, 52.219-9 and 19.704(b) of the Federal Acquisition Regulations (FAR) and PL 99-661.

1.1 Corporate Commitment

NSTec is committed to providing a fair and competitive environment for all Small Business Concerns. The company places great importance upon the competitiveness of the marketplace and the timely procurement of products and services that meet the highest standards of quality and reliability.

This Plan represents NSTec's "Good Faith Effort" regarding its commitment to actively supporting the Federal Government initiatives and laws established to enhance and increase the participation of Small Businesses, Small Disadvantaged Businesses, Women-Owned Small Businesses, Veteran-Owned Small Businesses, Service-Disabled Veteran Owned Small Businesses and Historically Underutilized Business Zone Small Businesses, in the subcontracting process. The goals and objectives of the NSTec programs will continue to remain an essential part of our parent company's commitment.

2.0 Definitions

SAM (System for Award Management): <https://sam.gov> A national internet database administered by the Small Business Administration that contains supplier profiles of Small, Small Disadvantaged, 8(a), Women-Owned, HUB Zone, Veteran-Owned and Service-Disabled Veteran-Owned small businesses.

HUB Zone Small Business (HUB): A small business that is owned and controlled only by US citizens with the principal office located in a HUB Zone and at least 35% of the employees must reside in the HUB Zone. HUB Zone small business concern means a

small business concern that appears on the List of Qualified HUB Zone Small Business Concerns maintained by the Small Business Administration

Individual Subcontracting Plan: A subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on planned subcontracting dollars or contract value in support of the specific contract.

Master Plan: A subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contracting plans, provided the master plan has been approved.

Service Disabled Veteran Owned Business (SDVOSB): 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 Disadvantaged Business (SDB): A Small Business that is at least 51% owned by an individual who is both a US citizen and considered socially and economically disadvantaged, as defined by the Small Business Administration (SBA), with the majority of earnings directly accruing to such individuals. Social disadvantage must include at least one objectively distinguishing feature that has contributed to social disadvantage such as race, ethnic origin, gender, physical handicap, long term residence in an environment isolated from the mainstream of American society. Social disadvantage is a non-designated group and must establish individual social disadvantage based on a preponderance of evidence. Economic disadvantage is defined as net worth below \$750,000 minus equity in primary residence and the applicant's ownership interest.

Small Business (SB): A business 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

Summary Subcontracting Report: This report collects prime and subcontractors' subcontract award data for a specific Federal Government agency when a Prime/Subcontractor: (a) holds one or more contracts over \$700,000 (over \$1,500,000 for construction of a public facility); and (b) is required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), HUB Zone Small Business (HUB Zone SB), Veteran-Owned Small Business (VOSB), Service-Disabled Veteran-Owned Small Business (SDVOSB), Alaskan Native Corporations (ANC) and Indian tribes concerns under a subcontracting plan with the Federal Government.

Women Owned Small Business (WOSB): A small business concern that is at least 51% owned by one or more women and in the case of any publicly owned business, at least 51% of the stock is owned by one or more women. One or more women must control the management and daily business operations.

Veteran-Owned Small Business (VOSB): A small business that is at least 51% owned by one or more veterans and in the case of any publicly owned business, at least 51% of the stock is owned by one or more veterans. One or more veterans must control the management and daily business operations.

Service-Disabled Veteran-Owned Small Business (SDVOSB): A small business that is at least 51% owned by one or more service-disabled veterans and in the case of any publicly owned business not less than 51% of the stock is owned by one or more service-disabled veterans. The management and daily operations must be controlled by one or more service-disabled veterans in the case of a veteran with permanent and severe disability the spouse or permanent caregiver of such veteran shall manage.

3.0 Principal Supplies/Services to be Subcontracted [FAR 52.219-9 (d)(3)]

The principal supplies and services to be subcontracted are listed below. NSTec's goal is to subcontract with all small business concerns in all potential North American Industry Classification System (NAICS) categories to the maximum extent possible. The principal supplies and services to be subcontracted are as listed below

Commodity/Service NAICS Code	SB	SDB	WOSB	HUB	VOSB	SDVOSB
Aircraft Parts - 336412	X	X	X	X	X	X
Automotive Supplies - 336111	X	X	X	X	X	X
Chemicals - 325110	X	X	X	X	X	X
Communication Equipment/Supplies - 334210	X	X	X	X	X	X
Computer hardware/Software - 334118	X	X	X	X	X	X
Construction Services - 236210	X	X	X	X	X	X
Electronics and Electronic Supplies - 334419	X	X	X	X	X	X
Engineering Services - 541330	X	X	X	X	X	X
Facility/equipment rentals/leases - 531120	X	X	X	X	X	X
Machinery - 333120	X	X	X	X	X	X
Metals - 331111	X	X	X	X	X	X
Office Equipment and Supplies - 339940	X	X	X	X	X	X
Personal Protective Equipment - 339999	X	X	X	X	X	X
Staffing Services - 561320	X	X	X	X	X	X
Tools - 332212	X	X	X	X	X	X

4.0 Goal Development

A review of outreach efforts, procurement documents, past performance, and/or possible new suppliers will be performed to determine subcontract opportunities for Small Businesses so that comprehensive and achievable goals may be established and incorporated into individual subcontracting plans.

Goals are established to comply with the provisions of FAR 52.219-8, 52.219-9, and FAR Subpart 19.7 and other federal agency clauses and as governed by certain public laws such as Public Law 95-507 (1978) which requires prime contractors with subcontracts in excess of the threshold as prescribed in the FAR, to establish a subcontracting plan to enhance the use of small/small disadvantaged businesses.

5.0 Identification and Development of Potential Sources

NSTec will build upon Northrop Grumman's long-established tradition of working with local sources such as Chambers of Commerce, small business development organizations and trade associations through its outreach program in an effort to develop a valid and dynamic source list of qualified small businesses.

Like Northrop Grumman, NSTec will rely on the information contained in the System for Award Management (SAM) found at <https://sam.gov> as an accurate representation of a small business concern's size and ownership characteristics for the purposes of maintaining a small business source list.

In addition to the SAM website, NSTec will participate in outreach activities, provide assistance and counseling, and will publicize its subcontracting opportunities, by posting solicitations on Internet resources such as Federal Business Opportunities (FedBizOpps.gov) where possible. Through its relationship with Northrop Grumman, NSTec will also participate in socio-economic trade fairs when possible to identify new potential small business sources. This information will be pursued through Northrop Grumman small business resources such as databases, newsletters, websites and small business advocates.

Sources to be utilized to locate small business concerns by NSTec will include:

- Las Vegas Latin Chamber of Commerce
- North Las Vegas Latin Chamber of Commerce
- Las Vegas Asian Chamber of Commerce
- Las Vegas Women's Chamber of Commerce
- Las Vegas Metro Chamber of Commerce
- Las Vegas Urban Chamber of Commerce
- DOE Office of Small Disadvantaged Business Utilization (OSDBU)
- Clark County Business Development Division
- System for Award Management (sam.gov)
- Nevada Minority Supplier Development Council
- Nevada Procurement Technical Assistance Center
- Nevada Development Authority
- Henderson Chamber of Commerce
- Clark County Chamber of Commerce
- Pahrump Chamber of Commerce
- Northrop Grumman Corporation Small Business Website

6.0 Utilization of Indirect Costs

Indirect costs are not included in the goals for Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), HUB Zone Small Business (HUB), Veteran-Owned Small Business (VOSB) and Service-Disabled Veteran Owned Small Business (SDVOSB) concerns.

7.0 Administration of the Master Subcontracting Plan

Northrop Grumman personnel have agreed to take an active role in working with the NSTec Procurement Department in administering NSTec's Small Business Subcontracting Plan. The position of Small Business Program Manager is responsible for ensuring the performance of the described tasks listed below:

7.1 Duties of the Administrator

- Works with contracts, purchasing, and marketing personnel to search for and develop qualified small business concerns as sources of supply.
- Works with and provides input to the Director, as deemed necessary, to properly administer this plan.
- Coordinates with the small business community, industry associations, and government.
- Assists small business concerns in meeting requirements of contracting in NSTec's business marketplace.
- Acts as an intermediary between customers, the Small Business Administration, and the NSTec management.

8.0 Efforts to Assure an Equitable Opportunity to Compete for Procurement Opportunities

NSTec assures that small business concerns will have an equitable opportunity to compete for subcontracts, by arranging solicitations, time for preparations of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of SB, SDB, WOSB, VOSB, SDVOSB, and HUB concern activities. NSTec personnel are encouraged to seek the use of approved small business sources and encouraged to develop new qualified sources on new business opportunities.

NSTec will publicize subcontract opportunities when possible through participation in small business publications, trade fairs, federal procurement conferences, industry conferences and

local affiliations, such as the Las Vegas Chambers of Commerce. NSTec will be an active member of or collaborate with the following organizations:

- Las Vegas Latin Chamber of Commerce
- Las Vegas Urban Chamber of Commerce
- DOE Matchmaking Events
- North Las Vegas Latin Chamber of Commerce
- Las Vegas Asian Chamber of Commerce
- Las Vegas Women's Chamber of Commerce
- Clark County Business Development Matchmaking Events
- Nevada Procurement Technical Assistance Center
- Nevada Minority Supplier Development Council

Through Northrop Grumman, NSTec will have access to various organizations supporting Small Businesses. In addition to participation in various outreach programs, NSTec will provide assistance to develop small business concerns in the following areas as appropriate:

- Bidders conferences to discuss and advise on specifications, statements of work and interpretation of requirements
- Site quality surveys to evaluate system and provide assistance to meet quality assurance requirements
- Post-award assistance to ensure requirements are fully understood and to assist in purchase order performance
- Financial assistance in the form of progress payments, where appropriate.
- In-house small business symposia attended by procurement, projects, engineering, and facilities, to discuss and advise on new programs and upcoming requirements
- One-on-One interviews with small businesses in-house and at small business conferences

NSTec's Small Business Office (within the purchasing organization) is fully integrated across project and functional management by which small business information is made available across the enterprise. Opportunities are also publicized at one-on-one counseling sessions and introductory meetings, trade fairs, federal procurement conferences, industry conferences, and local affiliations. Qualified vendors are also forwarded to procurement and pricing personnel for readily available access.

Policies and procedures are established to ensure the timely payment of amounts due, pursuant to the terms of their subcontracts with small business concerns.

9.0 Subcontracts Flow-down Provisions

NSTec will include the following provisions in all applicable purchase orders and subcontracts issued except where such inclusions are exempted by the terms of the FAR:

- FAR 52.219-8: Utilization of Small Business Concerns.
- FAR 52.219-9: Small Business Subcontracting Plan. Applies to all purchase orders and subcontracts that exceed \$700,000 (\$1,500,000 for construction of any public facility).
- Subcontractors to NSTec (except small business concerns) that receive subcontracts in excess of \$700,000 (\$1,500,000 for construction of any public facility) are required to adopt a subcontracting plan that complies with the requirements of this clause.

10.0 Reports, Reviews, Studies and Surveys

NSTec will cooperate in any reports, studies or surveys as may be required and submit reports to allow the government to determine the extent of compliance with this subcontracting plan.

NSTec will submit an Individual Subcontract Report (ISR) and/or Summary Subcontracting Report (SSR) via the Electronic Subcontracting Reporting System (eSRS) per the FAR 52.219-9(d)(10)(iii) and ensure that all subcontractors (except small business concerns) that receive subcontracts in excess of \$700,000 (\$1,500,000 for construction of any public facility) adopt a subcontracting plan and agree to submit as required by FAR 52.219-9.

11.0 Records Maintained to Comply with the Requirements of the Plan

NSTec will maintain records consistent with the requirements of this Master Subcontracting Plan, company policies and procedures supporting implementation of one of the following, dependent upon the individual contract's applicability.

11.1 Records

Records will be maintained which demonstrate procedures that have been implemented to comply with the goals in the plan, including the establishment of source lists, as well as the efforts to locate small business concerns and award subcontracts to them. These records will include, but not be limited to, the following:

- Source lists, guides and other data that identify small business concerns
- Organizations contacted in an attempt to locate small business concerns sources
- Records for each subcontract solicitation under a government contract resulting in an award more than \$150,000 indicating whether small business concerns were solicited and if not, why, and if applicable, the reason award was not made to a small business concern

- Records of internal guidance and encouragement provided to procurement, engineering, business development and technical personnel through 1) workshops, seminars, training and award/recognition programs and 2) monitoring performance to evaluate compliance with the program's requirements
- Records on a contract-by-contract basis, records to support award data, including the name, address and business size of each subcontractor
- Records of assistance provided to small business concerns

11.2 Outreach Efforts

NSTec will endeavor to pursue trade associations, business development organizations, and conferences and trade fairs to cultivate small business concerns. NSTec intends to participate in various local and regional trade fairs that present opportunities for small business networking and outreach.

11.3 In-House Training and Motivation

Internal training sessions and meetings will be made available for line, project, procurement, and staff managers at all levels of responsibility. These sessions will provide a means of orienting management, requirements, and acquisition personnel in the areas of government and company policies and procedures. The training will cover basic requirements and theory. In addition, specific case histories documenting company experience in implementing various small business concerns policies and procedures can be presented and discussed in an open forum. The intention of this information is to educate employees associated with the Procurement process on the requirements of NSTec's commitment to utilize small businesses in support of the Subcontracting Plan.

In addition to presenting information internally, NSTec procurement staff will seek additional learning opportunities provided through professional associations and symposia external to the company.

NSTec believes that a combination of internal and external training will be instrumental in providing our procurement staff with the specific professional knowledge and motivation that will result in a satisfactory record of achievement each year. We believe that this approach will be effective and intend to continue this program of personnel training and motivation, expanding it as necessary to meet any changing government requirements.

11.4 Assistance to Small Business Concerns

NSTec assists small business concerns by arranging solicitations, time for the preparation of bids, quantities, and specification and delivery schedules to facilitate participation by these

concerns. All reasonable efforts will be given to all qualified small business concerns to compete over a period of time.

11.5 Misrepresentation

Notice will be provided to our subcontractors in general terms and conditions and internal procedures concerning penalties and remedies for misrepresentation of business status as SB, SDB, WOSB, VOSB, HUB, SDVOSB concerns for the purpose of obtaining a subcontract to be included as part or all of a goal contained in the subcontracting plan.

The general terms, conditions and internal procedures state that a firm's status to obtain a contract shall: 1) be punishable by fine, imprisonment, or both; 2) be subject to the administrative remedies, including suspension and debarment; or 3) be ineligible for participation in programs conducted under the authority of the act.

11.6 Effective Period of the Master Subcontracting Plan

This Master Subcontracting Plan implements the provisions of FAR Subpart 19.7 and 52.219-9 as they apply to all categories of small business, including goals. Individual contract goals are also addressed in the individual subcontracting plan as submitted in eSRS.

NSTec will insure that the master plan is updated as necessary and will provide copies of the approved master plan, including evidence of its approval as required. Any goals and/or deviations from this plan deemed necessary by the customer to satisfy the requirements of the Prime Contract will be indicated in the individual subcontracting plan.

NSTec acknowledges that failure to comply in good faith with the clause of this contract entitled "Utilization of Small Business Concerns" or to submit an approved plan required by this clause is a material breach of the contract.

ATTACHMENT A TO MASTER
SUBCONTRACTING PLAN
SMALL, SMALL DISADVANTAGED, WOMEN-
OWNED, HUBZONE, VETERAN-OWNED AND
SERVICE-DISABLED VETERAN-OWNED SMALL
BUSINESS CONCERNS

INDIVIDUAL SUBCONTRACTING PLAN FOR NATIONAL SECURITY TECHNOLOGIES LLC

1.0 Direct And Indirect Goals Computations

The NSTec small business goals are expressed as percent of the total subcontracted dollar values as available to Small Businesses unless otherwise specified. All subcontracts and purchases that contribute directly or indirectly to contract performance will be included as part of commitment goals.

The proposed FY18 Subcontracting goals are as defined in the below chart:

Socio-Economic Category	FY18 Approved Performance Plan	
	Forecast Subcontract Dollars	% of Total Subcontract Dollars
Total PO \$ Available to SB (Excludes Foreign and Inter-Company Dollars)	\$9,200,000.00	100.00%
Large Business Dollars	\$4,140,000.00	45.00%
Small Business Dollars	\$5,060,000.00	55.00%
Small-Disadvantaged Business	\$276,000.00	3.00%
Woman-Owned Small Business	\$460,000.00	5.00%
HUB Zone Business	\$276,000.00	3.00%
Veteran-Owned Small Business	\$460,000.00	5.00%
Service Disabled Veteran Business	\$276,000.00	3.00%

In accordance with the provisions of FAR 52.219-9, the following is a sampling of the principal types of supplies and services to be procured from subcontractors, as well as an identification of some of the types planned for subcontracting to Small, Small Disadvantaged, Women-Owned, HUB Zone, Veteran-Owned and Service-Disabled Veteran-Owned Small Business concerns.

Commodity/Service NAICS Code	SB	SDB	WOSB	HUB	VOSB	SDVOSB
Aircraft Parts - 336412	X	X	X	X	X	X
Automotive Supplies - 336111	X	X	X	X	X	X
Chemicals - 325110	X	X	X	X	X	X
Communication Equipment/Supplies - 334210	X	X	X	X	X	X
Computer hardware/Software - 334118	X	X	X	X	X	X
Construction Services - 236210	X	X	X	X	X	X
Electronics and Electronic Supplies - 334419	X	X	X	X	X	X
Engineering Services - 541330	X	X	X	X	X	X
Facility/equipment rentals/leases - 531120	X	X	X	X	X	X
Machinery - 333120	X	X	X	X	X	X
Metals - 331111	X	X	X	X	X	X
Office Equipment and Supplies - 339940	X	X	X	X	X	X
Personal Protective Equipment - 339999	X	X	X	X	X	X
Staffing Services - 561320	X	X	X	X	X	X
Tools - 332212	X	X	X	X	X	X

2.0 Master Subcontracting Plan

The goals specified above will serve to augment the Master Subcontracting Plan for Small, Small Disadvantaged, Women-Owned, Veteran-Owned and Service-Disabled Veteran-Owned Small Business Concerns effective 01 October 2016 to 30 September 2017.

3.0 Program Administrator:

Name: Sharon R. Nanez

Title: Procurement/Small Business Program Manager

Address: PO Box 98521 M/S NLV018 Las Vegas, NV 89193

Phone: 702-295-2649

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Modification Changes

			MOD 332, SIGNED 11/08/17
MOD 323, SIGNED 8/10/17	MOD 320, SIGNED 7/24/17	MOD 311, SIGNED 5/9/17	MOD 302, SIGNED 2/27/17
MOD 299, SIGNED 1/25/17	MOD 293, SIGNED 12/13/16	MOD 288, SIGNED 11/2/16	MOD 274, SIGNED 7/18/16
MOD 260, SIGNED 12/17/15	MOD 250, SIGNED 9/14/15	MOD 242, SIGNED 5/26/15	MOD 234, SIGNED 2/25/15
MOD 220, SIGNED 9/5/14	MOD 215, SIGNED 7/9/2014	MOD 209, SIGNED 5/21/14	MOD 204, SIGNED 3/5/2014
MOD 196, SIGNED 12/2/13	MOD 187, SIGNED 9/26/13	MOD 175, SIGNED 5/31/13	MOD 174, SIGNED 7/12/13
MOD 167, SIGNED 2/26/13	MOD 151, SIGNED 8/01/12	MOD 141, SIGNED 3/21/12	MOD 137, SIGNED 1/25/12
MOD 127, SIGNED 9/22/11	MOD 121, SIGNED 7/20/11	MOD 118, SIGNED 5/12/11	MOD 116, SIGNED 4/12/11
MOD 112, SIGNED 3/29/11	MOD 111	MOD 110	MOD 107
MOD 105	MOD 104	MOD 103	M058
M056	M053	M050	M048
M038	M033	M032	M027
M021	M020	M018	M014

Part III – SECTION J**Appendix C – List of Applicable Laws, Regulations, and DOE Directives**

In addition to the list of applicable directives referenced below, the contractor shall also comply with supplementary directives (e.g., manuals), which are invoked by a Contractor Requirements Document (CRD) attached to a directive referenced below. This List excludes directives that have been granted an exemption from the CRD in whole or in part. For those Directives whereby the Contractor has been granted an exemption from the CRD, the Contractor shall comply only with the Operating Requirements identified in Appendix C-1. Directives identified in Appendix C-1 are for reference purposes only.

LIST B

DIRECTIVE NUMBER			DATE	DOE DIRECTIVE TITLE
DOE	O	130.1	9/29/1995	Budget Formulation
DOE	M	140.1-1B	3/30/2001	Interface With the Defense Nuclear Facility Safety Board
DOE	O	142.1	1/13/2004	Classified Visits Involving Foreign Nationals
DOE	O	142.3A Chg 1	10/14/2010 1/18/2017	Unclassified Foreign Visits and Assignments Program
DOE	O	150.1A	3/31/2014	Continuity Programs
DOE	O	151.1D	8/11/2016	Comprehensive Emergency Management System (Implementation to be completed per NSTec Implementation Plan Rev 2 dated May 9, 2017.)
DOE	O	153.1	6/27/2007	Department Radiological Emergency Response Assets
DOE	O	205.1B Chg. 3	4/29/2014 3/11/2013 5/16/2011	Department of Energy Cyber Security Program

DOE	M	205.1-3 Chg 1	12/20/2012	Telecommunications Security Manual
DOE	O	206.1	1/16/2009	DOE Privacy Program
DOE	O	206.2	2/19/2013	Identity, Credential, and Access Management (ICAM) (Implementation to be completed per NSTec Implementation Plan FP00-RL-15-0058 dated 7/8/15. Activities in paragraphs 1.a(1)(c), 1.b(2), and 2.b(1) will be implemented as set forth in the plan after funding is received.)
DOE	O	210.2a	4/08/2011	DOE Corporate Operating Experience Program
DOE	O	221.1B	9/27/2016	Reporting Fraud, Waste, and Abuse to the Office of Inspector General
DOE	O	221.2A	2/25/2008	Cooperation With the Office of Inspector General
DOE	O	225.1B	3/4/2011	Accident Investigation
NNSA	SD	226.1B	8/12/2016	NNSA Site Governance
DOE	O	226.1B	4/25/2011	Implementation of Department of Energy Oversight Policy
DOE	O	227.1A	12/21/2015	Independent Oversight Program
DOE	O	231.1B Admin Chg 1	11/28/2012	Environment, Safety and Health Reporting
DOE	O	232.2 A	1/17/2017	Occurrence Reporting and Processing of Operations Information
DOE	O	241.1B, Admin Chg 1	12/31/2010 Chg 1 dated 4/26/2016	Scientific and Technical Information Management
DOE	O	243.1B Admin Chg 1	3/11/2013 Chg 1 dated 7/8/2013	Records Management Program
NFO	O	251.1	4/24/2013	NNSA/NFO Directives System
DOE	O	252.1A Admin Chg 1	2/23/2011 3/12/2013	Technical Standards Program
NA SD	O	350.1	2/5/2009	M&O Contractor Service Credit Recognition
DOE	O	410.2, Admin Chg 1	8/17/2009 4/10/2014	Management of Nuclear Materials
NFO	O	410.X1	10/9/2013	Nevada National Security Site and North Las Vegas Facilities General Use and Operations Requirements <i>as modified by NNSA/NFO Letter AMBCM: dad-14014 dated 3-3-2014</i> . Full Implementation will be

				accomplished by August 31, 2015.
DOE	O	411.2	1/4/2017	Scientific Integrity
NSO	O	412.X1	6/27/2016	Real Estate/Operations Permit
DOE	O	413.1B	10/28/2008	Internal Control Program
DOE	O	413.3B, Chg 3	11/29/10 Chg 1 dated 10/22/2015 Chg 2 dated 5/12/2016 Chg 3 dated 12/20/2016	Program and Project Management for the Acquisition of Capital Assets
DOE	O	414.1D Admin Chg 1	4/25/2011 5/08/2013	Quality Assurance
DOE	O	415.1, Chg 1 Chg 2	12/3/2012 1/16/2013 1/13/2017	Information Technology Project Management
NNSA	SD	415.1	9/3/2014	Project Oversight for Information Technology (PO-IT)
DOE	O	420.1C Chg. 1	2/27/2015 12/4/2012	Facility Safety (Implementation to be completed by 12/31/2015)
DOE	O	420.2C	7/21/2011	Safety of Accelerator Facilities
NFO	O	421.X1 Rev 1	4/18/2017	Nuclear Facility Safety Management
DOE	O	422.1 Admin Chg 2	6/29/2010 6/25/2013 12/3/2014	Conduct of Operations
DOE	O	425.1D Admin Chg 1	4/16/2010 4/2/2013	Verification of Readiness to Startup or Restart Nuclear Facilities
DOE	O	426.2 Admin Chg 1	4/21/2010 7/29/2013	Personnel Selection, Training, Qualification and Certification Requirements for DOE Nuclear Facilities
NNSA	SD	430.1	1/28/2017	Real Property Asset Management
DOE	O	433.1B Admin Chg 1	4/21/2010 3/12/2013	Maintenance Management Program for DOE Nuclear Facilities
DOE	O	435.1 Chg 1	7/9/1999, Chg 1 dated 8/28/01	Radioactive Waste Management
DOE	M	435.1-1 Admin Chg 2	7/9/1999 Chg 1 dated 8/28/01 Chg 2 dated 6-08-2011	Radioactive Waste Management
DOE	O	440.2C, Chg 1	6/22/2011	Aviation Management and Safety

DOE	M	441.1-1 Admin Chg 1	3/07/2008 Chg 1 dated 2/24/2016	Nuclear Material Packaging Manual (Implementation to be complete 9/30/2016)
DOE	O	442.2 Chg 1	7/29/2011 10/4/2016	Differing Professional Opinions for Technical Issues Involving Environment, Safety, and Health Technical Concerns
NSO	O	442.1C	5/30/2008	Nevada Site Office Employee Concerns Program
DOE	O	443.1B Chg 1	3/17/2011 Chg 1 dated 4/21/2016	Protection of Human Research Subjects
NSO	O	450.X5B	9/20/2012	Subcritical Experiments
NSO	M	450.X2-1	5/30/2007	Underground Nuclear Testing, Test Readiness, and the Threshold Test Ban Treaty Verification Program
DOE	O	452.1E	1/26/2015	Nuclear Explosive and Weapon Surety Program
DOE	O	452.2E	1/26/2015	Nuclear Explosive Safety
NNSA	SD	452.2	11/17/2014	Nuclear Explosive Safety Evaluation Process
DOE	M	452.2-1A Admin Chg 1	4/14/2009 Chg 1 dated 7/10/2013	Nuclear Explosive Safety Manual
DOE	M	452.2-2 Admin Chg 1	4/14/2009 Chg 1 dated 7/10/2013	Nuclear Explosive Safety Evaluation Process <i>(Full Implementation will be accomplished by November 13, 2014).</i>
DOE	O	452.3	6/08/2005	Management of the Department of Energy Nuclear Weapons Complex
NA SD	M	452.3-1A	2/25/2016	Defense Programs Business Process System (DPBPS)
NNSA	SD	452.3-2	1/19/2017	Phase 6.x Process
DOE	O	452.4C	8/28/2015	Security and Use Control of Nuclear Explosives and Nuclear Weapons
DOE	O	452.6A	5/14/2009	Nuclear Weapon Surety Interface with the DOD
DOE	O	452.7	5/14/2010	Protection of Use Control Vulnerabilities and Designs
DOE	O	452.8	7/21/2011	Control of Nuclear Weapon Data
DOE	O	456.1A	7/15/2016	The Safe Handling of Unbound Engineered Nanoparticles
DOE	O	457.1A	8/26/2013	Nuclear Counterterrorism
DOE	O	458.1 Admin	2/11/2011	Radiation Protection of the Public and the Environment

		Chg 3	1/15/2013	
DOE	O	460.1D	12/20/2016	Hazardous Material Packaging and Transportation Safety
DOE	O	460.2A	12/22/2004	Departmental Materials Transportation and Packaging Mgmt.
DOE	M	460.2-1A	6/04/2008	Radioactive Material Transportation Practices Manual
DOE	O	461.1C	7/20/2016	Packaging and Transportation for Offsite Shipment of Materials of National Security Interest
DOE	O	461.2	10/31/2010	Onsite Packaging and Transfer of Materials of National Security Interest
DOE	O	462.1 Admin Chg 1	11/10/2008 7/20/2013	Import and Export of Category 1 and 2 Radioactive Sources and Aggregate Quantities
DOE	O	470.3B	8/12/2008	Graded Security Protection (GSP) Policy
		470.3C	11/23/2016	Design Basis Threat (DBT) Order
				<i>NOTE: DOE O 470.3B, GSP, will remain in effect until full implementation of DOE O 470.3C, DBT, is achieved. DOE O 470.3C is applicable to the contract consistent with the analysis requirements defined in the Defense Nuclear Security Design Basis Threat Implementation Plan dated February 2017 and NNSA/NFO memorandum, Design Basis Threat (DBT) Implementation Plan (IP) date June 9, 2017.</i>
DOE	M	470.4B, Chg 2	1/17/201	Safeguards and Security Program
DOE	M	470.4-3A	11/05/2008	Contractor Protective Force
DOE	O	470.5	6/2/2014	Insider Threat Program
DOE	O	470.6	9/2/2015	Technical Security Program
DOE	O	471.1B	3/01/2010	Identification and Protection of Unclassified Controlled Nuclear Information
DOE	O	471.3, W/ADMIN CHG 1	1/13/2011	Identifying and Protecting Official Use Only Information
DOE	M	471.3-1 W/ADMIN CHG 1	1/13/2011	Manual for Identifying and Protecting Official Use Only Information
DOE	O	471.5	3/29/2011	Special Access Programs
DOE	O	471.6, Chg 2	5/15/2015	Information Security
DOE	O	473.3A	3/23/2016	Protection Program Operations <i>NOTE: The requirements under Attachment 3, Requirement A, Chapter VII.Ic, and Attachment 3,</i>

				<i>Section A, Chapter IX.3, are not applicable. Deviations to these requirements are in process.</i>
DOE	O	472.2, Chg 1	7/21/2011 7/9/2014	Personnel Security (Effective 1/21/2012)
DOE	O	474.2, Chg 4	6/27/2011 Chg 2 dated 11/19/2012 Chg 3 dated 5/15/2015 Chg 4 dated 09/13/2016	Nuclear Material Control and Accountability
DOE	O	475.1	12/10/2004	Counterintelligence Program
DOE	O	475.2B	10/3/2014	Identifying Classified Information (Implementation to be completed by 12/31/2015)
DOE	M	481.1-1A, Chg 1	9/28/2001	Reimbursable Work for Non-Federal Sponsors Process Manual
DOE	O	483.1B	12/20/2016	DOE Cooperative Research and Development Agreements
DOE	O	534.1B	1/6/2003	Accounting
DOE	O	551.1D, Chg 2	4/2/2012 Chg 1 dated 8/13/2015 Chg 2 dated 8/9/2016	Official Foreign Travel
DOE	O	5480.30, Chg 1	3/14/2001	Nuclear Reactor Safety Design Criteria
DOE	O	5639.8A	7/23/1993	Security of Foreign Intelligence Information and Sensitive Compartmented Information Facilities
DOE	O	5670.1A	1/15/1992	Management and Control of Foreign Intelligence
NAP		14.1-C	5/2/2008	NNSA Baseline Cyber Security Program – CHAPTER VII ONLY (Remainder of directive is cancelled)
NAP		14.1-D	12/14/2012	Baseline Cyber Security Program (Implementation to be completed within six months of the creation of the NFO Risk Framework)
NAP		14.3-B	5/2/2008	Transmission of Restricted Data Over Secret Internet Protocol Router Network (SIPNet)
NAP		23 Admin Chg. 1	2/9/2015 12/13/2012	Atomic Energy Act Control of Import and Export Activities (Implementation to be completed by 12/31/2015)
NAP		24A	11/24/2015	Weapon Quality Policy (Implementation to be

				completed by 9/30/2016 per Implementation Plan PLN-1129 Rev 2 dated 4/12/2016)
NAP		25	10/10/2013	Management & Operating Contractor Business Meals and Light Refreshments
NAP		31	11/22/2016	NNSA M&O Off-Site Extended Duty Assignments
QP		100-1	3/1/2013	Quality Plan 100-1 (QP-100) Amendment 4, Application of Quality Requirements to UK and US Procurement Contracts and Loan Authorizations for Research, Design & Development

PART III – SECTION J
Appendix C-1 – Operating Requirements
January 26, 2011

Modification 209

Appendix C-1, Operating Requirements, is modified by deleting the section entitled ■ **DOE Cooperative Research and Development Agreements** in its entirety.

Modification 187

Appendix C-1 Operating Requirements is modified by deleting the section entitled ■ **Vital Records** in its entirety.

Modification 151

Appendix C-1 Operating Requirements is modified by deleting the section entitled ■ **Records Management Program** in its entirety.

Modification 121

Appendix C-1 Operating Requirements, LIST OF DOCUMENTS, is modified by removing the entry “*Departmental Energy, Renewable energy and Transportation Management (Reference: DOE O 430.2B)*” in its entirety.

Appendix C-1 – Operating Requirements, January 26, 2011, is modified by deleting the following entry as DOE 110.3A has been officially cancelled in its entirety.

The Contractor shall comply with the Operating Requirements listed herein. *The identified directives are listed for reference purposes only, i.e., only those provisions set forth herein constitute binding Operating Requirements.* The following referenced memorandum grants an exemption to the Directives:

Reference 1: Thomas P. D’Agostino (Administrator, NNSA) August 16, 2010 Memorandum for Patty Wagner (Manager, Sandia Site Office) and Stephen Mellington, (Manager, Nevada Site Office):
Subject: Strengthening Oversight Through Improving Contractor Requirements Documents in the National Nuclear Security Administration Management and Operating Contracts; Attachment: Contractor Requirements Document (CRD) Crosswalk Form

Reference 2: Thomas P. D’Agostino (Administrator, NNSA) December 9, 2010 Memorandum for Patty Wagner (Manager, Sandia Site Office) and Stephen Mellington, (Manager, Nevada Site Office);
Subject: Strengthening Oversight Through Improving Contractor Requirements documents in the National Nuclear Security Administration Management and Operating Contracts; Attachment: Contractor Requirements Document (CRD) Crosswalk Form

The contractor is responsible for flowing down requirements in Appendix C-1 and other contract requirements, when applicable, to ensure compliance with the terms and conditions of the prime contract.

LIST OF DOCUMENTS

The paragraph numbering under each heading below corresponds to the Contractor Requirements document (CRD) in the referenced directive for ease of traceability.

■ **Information Technology Management**

(Reference: DOE O 200.1A, Information Technology Management, Effective Date: 12/23/2008; Reference 2, NNSA Administrator's December 9, 2010 Memorandum)

1. Information Technology Strategic Planning. Maintain a strategic plan that coordinates IT planning and investment decisions and links to the Departmental strategic plan.
2. Capital Planning and Investment Control. Develop, implement, and maintain a Capital Planning and Investment Control (CPIC) process.
 - a. Support Department-wide CPIC efforts.
3. Enterprise Architecture. Maintain an Enterprise Architecture for the life-cycle management of information resources and related IT investments funded by or operated for DOE.
4. Hardware and Software Acquisition.
 - b. Implement a Software Quality Assurance (SQA) program.
5. Ensure that information published to Federal service-to citizens public websites are accessible to the public and individuals with disabilities.

■ **DOE O 484.1 – Reimbursable Work for the Department of Homeland Security**

(Reference: DOE O 484.1, Reimbursable Work for the Department of Homeland Security, Effective Date: 8/17/2006; Reference 2, NNSA Administrator's December 9, 2010 Memorandum)

Establish, maintain and implement, through the contractor's management system, the assurance that all requirements applicable to reimbursable work for DHS are satisfied to include ensuring:

- DHS-funded work at a DOE national laboratory or site will be performed on an equal basis to other missions at the laboratory or site and not on a non-interference basis with other missions of such laboratory or site; and
- No added administrative or personnel charges in excess of those paid by DOE will be charged for DHS work.

■ **Pricing of Departmental Materials and Services**

(Reference: *DOE O 522.1, Pricing of Departmental Materials and Services, Effective Date: 11/03/2004; Reference 2, NNSA Administrator's December 9, 2010 Memorandum*)

1. When the site/facility management contractor conducts activities of providing non-DOE entities materials or services, which the Department is authorized by law to provide, the site/facility management contractor must charge the non-DOE entity the full cost of providing the materials or services. Full cost includes all site/facility management contractor direct costs incurred in performing work, all allocable costs incurred by the site/facility management contractor at any DOE/NNSA facility, and a Federal administrative charge of 3 percent of these costs. In no case will any depreciation or imputed interest charges be imposed on the non-DOE entity requesting the materials or services.
2. For cosponsored work, Cooperative Research and Development Agreements (CRADAs), and other technology transfer mechanisms, the site/facilities management contractor will assess a Federal administrative charge of 3 percent on all funds contributed by the sponsor, regardless of the level of Departmental participation in funding the work effort. In-kind contributions will not be subject to the Federal administrative charge.
3. The site/facility management contractor may provide an exception to the requirement to assess the 3 percent Federal administrative charge for reimbursable work performed for non-DOE entities as follows:
 - a. funds-in agreements with domestic entities: small business concerns, institutions of higher education, nonprofit entities, and State and local governments.
 - b. based on the current listing of blanket pricing exceptions provided by DOE to the contractor for work covering research, development, testing, evaluation, training, and exercises directly related to specified activities listed. If any of the blanket exceptions are canceled, DOE will provide the contractor with appropriate notification.
1. The following activities may become part of the contractor's responsibilities. These activities require special pricing consideration and, as applicable, DOE will provide the contractor with additional information for pricing the activity.
 - a. Information Dissemination Materials. DOE must comply with Office of Management and Budget (OMB) Circular A-130, Management of Federal Information Resources. The contractor will assist DOE in complying with Circular A-130. Circular A-130 requires DOE to set charges at a level sufficient to recover the cost of dissemination but no higher. Charges must exclude the cost of the original collection and processing of the information. Should an exception to this policy be warranted, DOE will provide additional guidance.

- b. Byproduct Material. The contractor shall establish prices and charges for byproduct material sold, pursuant to Title 42 United States Code (U.S.C.) 2111 and 2112, at either the full cost recovery price or the commercial price, whichever is higher. Lower prices may be established if it is determined that such prices and charges will provide reasonable compensation to the Government, will not discourage the use of or the development of sources of supply independent of DOE, and will encourage research and development. Before establishing lower prices, the contractor shall obtain the approval of DOE.
- c. Other Materials and Services. The contractor shall establish prices and charges for materials and services sold, pursuant to 42 U.S.C. 2201(m), at either the full cost recovery price or the commercial price, whichever is higher. Lower prices and charges may be established if it is determined that such prices and charges would still provide reasonable compensation to the Government and would not discourage the development of supply sources independent of DOE. Before establishing lower prices, the contractor shall obtain the approval of DOE.
- d. Foreign Research Reactor Spent Nuclear Fuel Program. DOE will provide the contractor guidance on charging for this activity.
- e. Access Permits. The contractor shall not charge for access permits issued with the exception of those access permits which are charged in accordance with Title 10 Code of Federal Regulations (CFR) 725.
- f. Access Authorizations. The contractor shall not assess charges for access authorizations when authorization—
 - (1) is transferred from a study agreement to an access permit held by the same organization;
 - (2) is for an employee or staff member of an accredited, nonprofit educational institution having, at a minimum, a 2-year program of college level studies, and the work is related to the civilian application of nuclear energy;
 - (3) will not be considered one for which DOE has been paid, when the individual transfers to another organization; and
 - (4) is granted to obtain full and free competition.
- g. Use Permits. The contractor shall not assess a charge for preparing a permit which authorizes the use of DOE facilities or services. Charges for use of the facilities or services will be calculated separately.

- h. Assistance for the Protection of Health and Safety in the Event of Radiological Incidents. The contractor shall request guidance from DOE on charging for this activity.
- i. Museums and Exhibits. Unless there is specific authority to collect admission fees, the contractor will not charge visitors to DOE museums and exhibits for admission.
- j. Commercial Property Rental. DOE will provide the contractor guidance on charging for this activity.
- k. Use of Facilities. DOE will provide the contractor guidance on charging for this activity.
- l. Office of Science User Facilities. The contractor may make the Office of Science User Facilities available for research by a broad community of qualified users on the basis of programmatic interest, scientific merit of research proposals, technical feasibility, capability of the experimental group, and availability of the resources required. The contractor shall adhere to the following regarding charging users for use of the facilities.
 - (1) Use of user facilities will be authorized at no charge for research which is of DOE programmatic interest and which is approved by laboratory management, usually with the advice of program advisory committees. Use free of charge will apply to experiments approved for conduct during periods in which the facility operates in normal mode for its primary purpose. The facility manager will determine which requests meet those criteria and report periodically to the appropriate DOE program manager.
 - (2) When facilities are made available for proprietary research, the user will be charged a fee that realizes full cost recovery (see definition in item 6b*, below).
 - (3) When facilities are operated for special circumstances, such as running the facility outside the normal operating mode or schedule, the user will be charged the incremental costs.
- m. Hazardous Materials Spill Center. The contractor will charge users of the facility only for direct and indirect costs for their experiments.
 - (1) Invoices for materials and services will be prepared and issued promptly in accordance with the terms of the reimbursable work contracts or agreements.
 - (2) Work for others issues are covered in the work for others clause of this contract.

(3) Collections are covered under the payments and advances clause of this contract.

* *FOR INFORMATION PURPOSES ONLY.* [6.b. Full Cost. All direct and all indirect costs, including general and administrative expenses, incurred at any Departmental contractor facility by the site/facility management contractors in performing work on behalf of non-DOE entities, and a Federal administrative charge of 3 percent of these costs.]

DE-AC52-06NA25946
Modification M003
Attachment D

SECTION J
APPENDIX D – CORPORATE PARENT PROMISES

APPENDIX D – CORPORATE PARENT PROMISES

National Security Technologies, LLC (NSTec) and its parent companies (Northrop Grumman, AECOM, CH2M Hill, and NFS) are committed to supporting this contract through direct investment in NTS, its satellite facilities, and their associated communities. The following is a brief summary of the definitive hard dollar commitments that NSTec will implement. The combined dollar total of these investments by NSTec and its parent companies exceeds \$24,000,000 over the ten year life of the contract.

1. NTS Extended Support Initiative:

- **National Security Development and Test Center** – Implement an initiative to establish a center of national security expertise. The Center will pursue solutions to the most challenging national security issues. NSTec pledges \$1,725,000 over the first three years of the contract for concept startup activities. NSTec will spend \$325,000 a year for the first two years in developing the Cyber Warfare Integration Network facility
- **Advisory Group** – Establish a Senior Advisory Group consisting of nationally recognized experts on nonproliferation and security issues to provide assistance and consultation to the NSTec General Manager. NSTec will invest \$750,000 over the life of the contract in support of this Advisory Group.
- **ISO 9001, ISO 14001, CMMI and VPP STAR Processes Certification Initiative** – NSTec is committed to implement the documentation, training, and operational discipline required to achieve these internationally recognized performance certification. Estimated cost = \$75,000.
- **Lean Management** – Commit to process and performance improvements under the contract. NSTec will invest \$150,000 during the transition and first year of the contract.

2. NSTec Work Force Initiatives:

- **Key Management Performance Incentives** – NSTec’s parent companies have established an executive total compensation plan over the life of the contract of which \$10,000,000 will be paid for solely by the NSTec parent companies.
- **Graduated Employee Award Fee Sharing** – NSTec has committed and budgeted for the implementation of a graduated “*Award Fee Sharing Program*” for all employees. The exact dollar value of this program depends on NSTec’s performance evaluation scores.
- **Leadership Training** – NSTec pledges to invest \$1,000,000 over the term of the contract to support third party leadership training of its staff to help support the development of the next generation of NTS leaders.

- **Continuing Education** – NSTec has budgeted \$500,000 for employees to enhance their management and technical skills through continuing education.
- **Distance Learning Program** – NSTec has budgeted \$500,000 to support the design and implementation of a distance-learning program for its employees.

3. NSTec Community Outreach Initiative:

- **Company Commitment to Local Area Charities** – NSTec will, at a minimum, contribute \$1,000,000 to local area charities over the life of this contract.
- **Community Economic Development** – AECOM, one of NSTec's parent companies, will establish a Las Vegas, Nevada office to contribute to the development of the local area economy. Expenditures are estimated at approximately \$300,000 per year or \$3,000,000 over the life of the contract.
- **Funding of Scholarships, Grants, & Endowments** – NSTec has budgeted an expenditure of \$4,000,000 over the life of the contract to establish and maintain an education development fund. The financial structure of the fund will be investment based and it will continue to grow and provide funding beyond the end of this contract.
- **Company Commitment to Local Area Scholastic Development** – NSTec pledges to establish and endow a scholarship fund, with a direct corporate pledge of \$1,000,000, designed to provide sustained financial assistance to deserving high school graduates.

PART III – SECTION J
APPENDIX E – (RESERVED)

TBD

APPENDIX F - KEY PERSONNEL

Modification 274

Appendix F – Key Personnel, is modified by removing Dr. Raymond J. Juzaitis – President, and inserting James L. Holt – President. Removing Christopher Deeney – Vice President and inserting Ghazar R. Papazian – Vice President for Program Integrations. Removing James L Holt – Vice President and inserting Roy D. Bridges, Jr – Vice President for Operations. Removing Ghazar R. Papazian – Director, Defense Experimentation & Stockpile Stewardship and inserting Michele K. Baker. Removing Stanley S Henry – Director, Global Security and inserting Melissa J Hunt – Director, Global Security. Removing Charles R. Martin – Director, Nuclear Operations in the table below.

Modification 234

Appendix F – Key Personnel, is modified by deleting the current list of personnel and substituting the table below.

Modification 137

Appendix F – Key Personnel, is modified by removing Dr. Stephen M. Younger – President, and inserting Dr. Raymond J. Juzaitis – President

Modification 127

PART III, List of Documents, Exhibits, and Other Attachments, Section N – List of Attachments, Appendix F – Key Personnel, is modified by removing John Ciucci and inserting Teri L. Browdy as the Director, Environmental Management

Contract DE-AC52-06NA25946

In accordance with DEAR 952.215-70 the personnel listed below are considered essential to the work being performed under this contract.

Appendix F – Key Personnel is modified by deleting the current list of personnel and substituting the table below.

NAME	POSITION
James L. Holt	President
Ghazar R. Papazian	Vice President for Program Integration
Roy D. Bridges, Jr.	Vice President for Operations
Michele K. Baker	Director, Defense Experimentation & Stockpile Stewardship
Teri L. Browdy	Director, Environmental & Waste Management
Melissa J. Hunt	Director, Global Security

(END OF MODIFICATION)

PART III – SECTION J

APPENDIX G - CONTRACTOR'S TRANSITION PLAN

National Security Technologies LLC

DETAILED TRANSITION PLAN

April 11, 2006

**Management and Operation of the Nevada Test
Site and Satellite Facilities**

COMPANY PRIVATE

V i s i o n S e r v i c e P a r t n e r s h i p

EXECUTIVE SUMMARY

National Security Technologies, LLC (NSTec) understands the importance of a well-planned and executed transition for the NTS M&O contract and has developed this detailed transition plan based on proven successes from past transitions. The primary keys to a successful transition are early preparation, communication and coordination with all stakeholders, use of lessons learned, and minimization of risk for the NSO and anxiety for affected incumbent employees.

Vision – A safe, secure, efficient, seamless transition of the NTS M&O contract with minimal disruptions to ongoing operations and readiness to assume full operational responsibility on July 1, 2006

Service – Communicate and coordinate thoroughly and completely transition activities and scheduled events with NSO and all parties to mitigate or eliminate barriers to smooth transition

Partnership – Partner and collaborate with NSO, the National Weapons Laboratories, the incumbent contractor, other site contractors, the unions, and the workforce to build trust and cooperation

Transition commitments made by NSTec and its parent organizations are outlined in Table 1.

Table 1. Transition Commitments. *NSTec will conduct a safe, smooth, and orderly transition of employees and work scope with minimal adverse impact on ongoing operations.*

Pre-award planning to ensure transition team readiness by April 1, 2006.	Detailed Transition Plan and Transition Team ready on April 1 at no cost to Government
Corporate support from all members of NSTec and the subcontracting team	Full depth and breadth of corporate resources available to the transition team and transition process
Use of specialists with extensive NTS experience	Ensures a smooth and orderly transition
Focus on minimizing risks to safety, health, and environment	A safe, low-risk transition
Completion of transition on schedule with minimal disruption of ongoing work	Readiness to accept full M&O contract responsibility on July 1, 2006
4 targeted cost savings initiatives (Lean Process Improvement)	Prepared by a Northrop Grumman specialist at no cost to the Government
Parent Organization Oversight Plan	Documented information for NSO concerning transition and start-up.
Diversity Plan	
Final Readiness Review Report	

1. PROCESS FOR PROVIDING AN ORDERLY TRANSITION

The NSTec parent companies and supporting subcontractors have extensive experience in planning and managing successful transitions of Government contracts including contracts for DOE, NASA, and U.S. Air Force. Our transition process is based upon successful contract transitions with similar size workforces (e.g., 6,000 employees transitioned on the RFETS contract; 2,600 employees transitioned on the NASA JBOSC contract), nuclear facilities, laboratory facilities, off-site facilities, organized labor, and relevant technical challenges.

A Three-Phased Transition Approach. Based on our transition experience and lessons learned, we developed the basic steps to our transition approach presented in Figure 1. Our approach

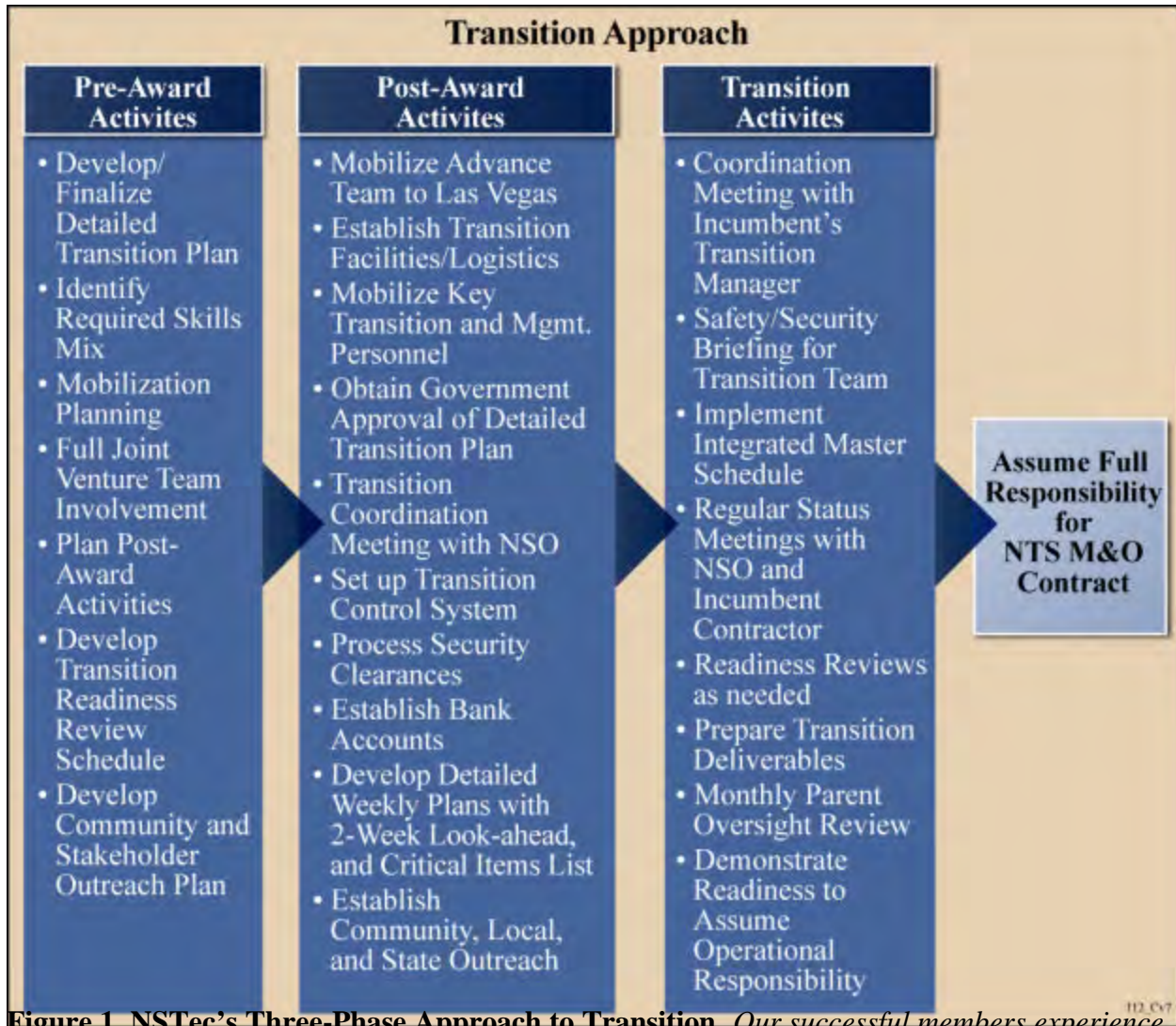


Figure 1. NSTec's Three-Phase Approach to Transition. *Our successful members experience with multiple transitions gives us a high-level of confidence in completing the transition on schedule with no adverse impact to safety and continuity of operations.*

falls into three distinct phases: 1) the pre-award phase consisting of the development of an integrated master schedule and related planning working closely with NSTec's Corporate

Finance, Human Resources, Contracts, and IT Departments; 2) the post-award phase consisting of the mobilization of our advance transition team to Las Vegas, establishment of transition facilities, logistics, and systems to support the transition team and process, and finalization of the detailed transition plan upon NSO approval; and 3) the execution of the detailed transition plan on schedule, and the assumption of full responsibility for the NTS M&O contract. Principal keys to the successful execution of transition are 1) the early coordination and involvement by all involved parties; 2) clear and unequivocal communication to all stakeholders of all transition activities; 3) management of transition as a project; and 4) maintaining the quality of transition operations. We discuss these four keys to a successful transition in the following paragraphs.

1. Early Involvement of All Parties. To formalize the early involvement of all parties, NSTec will lay the foundations set forth in the following paragraphs.

Interfaces with the NSO Contracting Officer and the Incumbent Contractor – NSTec, upon contract award, will establish effective, professional working relationships with the Contracting Officer/designee, National Weapons Laboratories, the incumbent contractor, and associated subcontractors. The NSTec General Manager will negotiate a three-party agreement between NSTec, NNSA and the incumbent contractor. The three-party agreement will seek to coordinate:

- Transfer of employees to new contract
- Transfer of financial accounting system
- Transfer of contracts, leases, property, and procurement commitments
- Identification of safety, security, and environmental liabilities
- Identification of projects and ongoing work
- Establishment of procedures to resolve issues
- Validate existing work authorizations

NSTec will initiate its partnering relationship with the NSO Contracting Officer through a professionally conducted transition that satisfies agreed upon expectations according to a plan and reporting process that is managed openly, cooperatively, and proactively.

Partnering with the Workforce – NSTec will commence its partnering relationship with employees by communicating our vision for the contract, by an open and honest flow of information, and by optimism about the challenges of the future. We will build a relationship upon mutual respect and recognition of our shared responsibilities to support the NSO mission and to evolve in support of the NSO's changing needs. NSTec will establish a website, schedule "open houses" for incumbent personnel, and conduct one-on-one meetings to resolve individual issues during off-hours and on weekends so as not to interfere with contract work.

Working/Coordinating with Labor Unions – Immediately upon contract award, NSTec will seek to continue good working relationships with the local unions. Steve Younger will initiate contact with union management, and thereafter, NGC's Human Resources Manager, Dan Enttuno, will be responsible for day-to-day contact. NSTec's labor relations will maintain a focus on developing a win-win solution of issues for labor, the NSO, and NSTec. NSTec and its subcontractors will work with the union leadership to achieve a seamless integration of union personnel into the new contract.

2. Clear and Unequivocal Communication with All Stakeholders. NSTec will provide timely, effective, and ongoing communications with NSO, the National Weapons Laboratories, the

incumbent contractor and other site contractors, the incumbent workforce, and stakeholders to assure all transition tasks and activities are thoroughly communicated and coordinated. We will provide transition status and related information through a dedicated website, direct phone access, email, mailings, and town hall and one-on-one meetings. Our communication actions will accommodate all shifts, locations, and schedules and will facilitate access to information on employee transition, compensation, and benefit packages.

3. Management of the Transition as a Project. We will apply the discipline of project management to transition with its fixed number of tasks to be completed within a fixed time of 90 days and within a fixed budget. We stress schedule and cost control, teamwork and collaboration, flexibility to respond quickly to unanticipated events, continuous analysis of risk, and systematic monitoring of performance and status reporting.

Steve Younger, NSTec's General Manager, will have management oversight of our transition and will have ultimate responsibility for all facets of transition execution. In his absence, Mike Butchko, our Deputy GM will assume overall control of transition. Steve Younger will delegate authority for day-to-day management of transition to Peter Zavattaro. Bob Layton will support Peter Zavattaro as Deputy Transition Manager. Bob is currently the Director of Human Resources for Northrop Grumman Technical Services.

NSTec's transition management team is comprised of our proposed key personnel and specialists with specific experience in the transition of contracts similar in magnitude and complexity to the NTS contract. Specialists from the four offering companies and specialists from our five pre-selected subcontractors will be temporarily assigned to provide transition support in such areas as human resources, asset validation, procurement, subcontractor support, IT/communications, safety, quality, accounting, labor relations, and contracts. Designated specialists include Michael Martin for the IT/Communications function, and Bob Layton, our Deputy Transition Manager, for the Human Resources function.

In addition, there are designated subject matter experts as follows; Gy Allen will support Jim Holt in Stockpile Stewardship and Defense Operations transition activities, Augie Gurrola will support AC Hollins in Operations Infrastructure transition, Jim Magruder will support Dave Post in Nuclear Operations transition, and George Hughes will support Peter Zavattaro and Bob Layton in transition management.

4. Maintaining Quality of Transition Operations. Each step in the transition of operational responsibility from the incumbent contractor to NSTec will be closely monitored by our General Manager, key Functional Managers, and by our Transition Manager to ensure no reduction in either quality or timeliness of services. A key tool that we will use to deliver quality is the Transition Readiness Review (TRR). This tool will provide the Transition Manager and NSTec senior management with a daily status of transition progress and accomplishments. The Transition Manager is responsible for the maintenance of the TRR program, updating it daily to track progress against milestones, business system assessment, equipment and facilities validation, ESH&Q actions, and all transition activities as they relate to each functional area. NSTec developed the TRR program for the NTS transition prior to contract award, will implement it on contract award, and will complete/validate it near the end of the transition period.

The NSTec parent organizations will also monitor transition progress. They have tasked Gregg Donley, President of Northrop Grumman Technical Services and Chair of the NSTec Parent Organization Oversight Committee (POOC) to work with the Transition Manager and his key staff in Las Vegas to review the status of transition milestones and deliverables, provide guidance, and supply additional resources if required. Gregg Donley is very experienced at assisting transitions having provided transition oversight and full corporate support for 7 major DoD contracts in the last 5 years. He will begin oversight of the NTS transition with a review of the Pre-Award Activities. He will follow up with monthly oversight assessments until the end of the transition period.

2. SUMMARY OF PRE-TRANSITION ACTIVITIES

In preparation for transition, it was necessary to plan for mobilization and to establish processes and activities to allow rapid transition start-up and immediate communication with employees, stakeholders, and the community. These processes and activities include:

- Preparation of this Plan and Schedule
- Coordination of facilities, equipment, lodging, and transportation
- Establish a Community and Stakeholder Outreach Plan
- Establish a NSTec web-site
- Design and preparation of press releases and public announcements
- Establish an IT Transition System
- Establish an Integrated Master Schedule and a Transition Readiness Review Schedule

3. FUNCTIONAL AREA TRANSITION PLANS

There are eleven Functional Area Plans that make up the Detailed Transition Plan. The staffing allocations for these functional areas are shown in Table 2.

Table 2. Time-Phased Transition Staffing. *Our phased staffing starts out at 15, peaks at 95 in the last week of May, and ends on day 90 with 57.*

Transition Management	4	5	9	9	9	9	9	9	9	9	8	8	8
Nuclear Operations	1	2	5	5	9	9	12	11	11	11	11	6	6
National Security	1	2	3	3	3	3	6	6	6	6	6	6	4
Human Resources	1	2	14	14	14	13	13	13	11	7	1	1	1
Op's Infrastructure	1	2	2	3	13	13	13	13	13	13	13	6	5
Planning and Integration	1	2	2	2	2	2	2	5	5	4	4	4	4
Environmental Mgmt	1	2	6	6	6	6	11	12	12	12	12	11	8
ESH&Q	1	1	1	3	3	3	5	6	6	5	4	4	3
SS & DE	2	2	4	4	4	4	6	7	7	7	7	6	5
Business Systems	1	1	4	4	6	7	9	10	10	10	10	10	10
IT/Communications	1	1	1	1	1	1	3	3	4	4	4	3	3
Staffing by Week:	15	22	51	54	70	70	89	95	94	88	87	65	57

Specific steps of each Functional Area Transition Plan, described below, are included in the attached Implementation Schedule

3.1 TRANSITION MANAGEMENT

General Manager Steve Younger has management oversight of transition with ultimate responsibility for all facets of transition execution, ensuring that sufficient resources are available to meet transition commitments. He will establish a three-party agreement with the incumbent contractor and NSO. During transition and throughout the contract, the POOC will hold monthly teleconferences to discuss activities and issues. Once during transition, and quarterly thereafter, the POOC will meet in Las Vegas to discuss contract progress. The Management team, in coordination with the POOC will **prepare Parent Organization Oversight Plan** for NSO.

During transition, the Management Team, along with the appropriate subject matter specialists, will review all legal and regulatory issues and outstanding litigation, support badging of new employees, and inventory all classified documents and materials. The Management Team will also be responsible for overall logistics support and scheduling to ensure minimum disruption to on-going work.

The Transition Management Team will track transition activities daily against the Integrated Master Schedule and make daily reports. They will identify and resolve issues before they become problems and advise the General Manager/Deputy General Manager of potential problem areas and of the need for additional resources. The team will **prepare the Final Readiness Review Report** at the conclusion of transition for NSO

3.2 NUCLEAR OPERATIONS

The Division Leader for Nuclear Facilities and Nuclear Operations, Dave Post, will lead the transition activities for Nuclear Operations. In addition to mapping current employees into the new organization, his team will conduct a Nuclear Safety Analysis Due Diligence. The team will also review current work processes, material inventory, storage and packaging, safety training and qualification procedures, USQ safety, site transportation safety analysis, radiation containment, and nuclear transportation performance. The team will assess VSS documentation and Conduct of Operations. The team will validate the FY 2006 Baseline for Nuclear Operations and BCWS/BCWP/ACWP/EAC. The team will confirm MAR, MAB, and assess 5480.2A compliance. The team will also compile a Nuclear Operations Report as part of the Final Readiness Review Report.

3.3 NATIONAL SECURITY

National Security Director, Bob Summers, supported by NSTec specialists, consultants and subcontractors as appropriate, will ensure a smooth transition of all national radiological emergency response, nonproliferation, Special Operations, homeland security and other DOE and non-DOE missions. The transition of these missions will include the confirmation of current managers where appropriate, and identification of new or temporary managers where needed to ensure smooth transition of missions led by qualified individuals. These management decisions will be made after reviewing the current leadership and organizational structure in place at start of transition. The transition will also map current employees whose primary work supports these missions to the NSTec organization. Each mission transition will include facility and equipment

reviews and confirmations, safety basis reviews, programs reviews and readiness posture reviews where appropriate. The purpose of these reviews is to accomplish due diligence to ensure NSTec is aware of program actions which will take place soon after contract take over and is prepared to support and execute the 24/7 national emergency response missions at contract takeover. The team will also prepare a National Security Readiness Report as part of the Final Readiness Review Report.

3.4 HUMAN RESOURCES

Deputy Transition Manager, Bob Layton, will lead the human resources team of specialists in managing the smooth transition of the current workforce. We will offer employment to all BN employees who successfully complete their probationary period as of the date of contract award, except BN's key personnel and other senior managers who report directly to BN's General Manager. Those personnel will be evaluated on a case by case basis. During transition, as incumbents are mapped to our new organization structure, small groups may be offered the opportunity to join one of our pre-selected subcontractors.

During transition, Steve Younger and Northrop Grumman's Labor Relations Specialist, Dan Entunno, will meet with the unions to introduce the company and our management philosophy. We will honor all existing collective bargaining agreements with all unions.

Immediately after contract award, the HR transition team will schedule employee orientations to explain NSTec's organization and plan for transition, to alleviate concerns and apprehensions and begin the integration process. Briefings will be scheduled to ensure non-interference with ongoing operations, and family members will be invited to attend. Employees will be provided a detailed benefit summary and a list of documentation required to complete the hiring process. Incumbent workers will receive a total compensation package of pay and benefits equivalent to their present amounts.

The team will maintain continuous communication with incumbent workforce regarding transition, employment and benefits issues; support recruiting, interviewing, hiring, and employee mapping processes; and meet with labor management to communicate plans for labor usage. The team will **prepare Diversity Plan for NSO** and a Human Resources Report as part of the Final Readiness Review Report.

Communication will be a critical issue during transition. The team will establish and maintain a transition Website, prepare a weekly transition newsletter, establish and execute town-hall style community meetings, support briefings to the media and provide transition status briefings to NSO

3.5 OPERATIONS INFRASTRUCTURE

The Director of Site Operations, A.C. Hollins, will lead the transition activities for the Site Operations Infrastructure. In addition to mapping current employees into the new organization, his team will conduct sample inventories and audits, support all transition logistics requirements including transportation, materials, shipping, and storage, and review all site services and utilities agreements.

The team will review all Engineering and Construction Projects, and evaluate the Non-Conformance Reporting Program, and Work Permitting Program.

The team will review and assess the property management system(s) for real and personal properties, and the Emergency Operation Services (Emergency Management, Operations Coordination Center, and Fire & Rescue), perform facility condition assessment validations, facility hazard assessment validations, and establish the criteria for facilities turnover at the start of the contract. In addition, the team will:

- Brief NSO on the Chief Engineer concept
- Work with P&I to review, assess and/or establish the Project Management Office
- Review and revise all required permits and licenses from the current contractor to NSTec on July 1, 2006
- Review all subcontractors, especially any that may be in litigation
- Validate condition of all site facilities, signage, utilities and roads
- Develop a preliminary Engineering Strategic Plan
- Work with the Nuclear Operations Lead to ensure that the existing site maintenance program is in compliance for nuclear facilities and operations
- Ensure the Site Maintenance Program is in compliance with DOE and other appropriate national standards and it meets the DNFSB expectations
- Compile a Site Operations and Infrastructure Readiness Review Report as part of the Final Readiness Review Report
- Evaluate medical and emergency management operations

3.6 PLANNING INTEGRATION

The Planning and Integration Manager, Al Rubalcaba, will lead the transition activities for the Planning Integration. His team will review and evaluate information and reports available from the incumbent contractor's system and validate that the data and reports satisfy all NSO business operational requirements and DOE directives. To the extent that access is provided, we will seek to confirm that BN has a consolidated cost collection and reporting infrastructure that ties the Work Breakdown Structure (WBS)-based cost code of account elements to resource loaded project schedules with organizational breakdown structure correlation. Specifically, we will ensure that the existing financial management system retains a history of cost performance that supports effective financial planning as well as DOE/NNSA budget process requirements.

In addition to focusing on systems and processes, the team will focus on the transition of cost and schedule professionals into the new organization, and re-energize them to be a part of the NSTec vision for the NTS. The team will re-enforce their importance to the successful execution of mission objectives and to the success of NSTec's commitment to service and partnership. Throughout the transition period, the team will provide and solicit comments from NSO on status reports, readiness reviews, and PCS assessments and evaluations. The team will also review existing technical, cost, and schedule baseline and planning documentation, as well as risk management and contingency/strategic plans. The team will also compile a Planning and Integration Report as part of the Final Readiness Review Report.

With the assistance of NSO/NNSA, other customers and stakeholders, and incumbent personnel, NSTec is committed to the implementation of an enterprise system that is integrated and

standardized across all programs and projects, and capable of supporting NSO/NNSA planning and budgeting while evaluating contractor performance at all levels of the Work Breakdown Structure. In addition, the team will:

- Evaluate project control systems
- Evaluate integrated Information Technology and Communication Systems
- Evaluate risk management systems across all levels of operation

Extending into the first 180 days of the contract execution, in conjunction with the Business Systems and IT/Communications organizations, NSTec will conduct a systematic review of the incumbent contractor Project Control System using parent company resources as needed.

3.7 ENVIRONMENTAL MANAGEMENT

The Director for Environmental Management, John Ciucci, will lead the transition activities for Environmental Management. In addition to mapping current employees into the new organization, his team will review and validate FY06 EM Work Scope, Schedule and Budget. The team will walk down work sites for safety conditions and review Union safety concerns, safety performance and injury statistics. The team will review the EM Rad Con Program, baseline members of the workforce with bio-assay, and look at posting status.

The team will review Existing/Outstanding NOV's and related reports, validate the Chemical Control Program, and conduct 100% inventory of Haz Waste. The team will review the EM Regulatory Compliance, FFCA/STP milestones, Nuclear Safety Requirements, and Generator & Shipper Compliance.

The team will review Operating Permits, Waste Generator information, pending legal actions, and property inventory. The team will evaluate the status of Conduct of Operations and the Authorization Basis. The team will look at the evaluations, postings, and implementation plans for the Criticality Program. The team will also compile an EM Report as part of the Final Readiness Review Report. The team will also:

- Verify compliance with RCRA operating permits
- Verify compliance to air and water NPDES permits
- Validate status of TRU program
- Walk down all restoration activities and validate documentation
- Walk down all monitoring wells and validate compliance
- Validate health and safety management program
- Verify compliance to fire hazard analysis and combustible control
- Review PAAA status
- Validate BCWS/BCWP/ACWP/EAC
- Validate FY06 Baseline

3.8 ESH&Q

The Manager for ESH&Q, Gary Griess, will lead the transition activities for ESH&Q. In addition to mapping current employees into the new organization, his team will conduct ESH&Q facility walk down and inspection of Site to ensure safety, and review ISM procedures and issues.

The team will evaluate existing management tools including those for quality assurance, safety, risk management, planning and scheduling, and reporting. Specifically, the team will evaluate ESH&Q Environmental Procedures and Systems, and ESH&Q Safety Procedures and Systems. The team will review the Radiological Protection Program, the Criticality Safety Program, and accident, injury and illness statistics. The team will look at all general safety programs, including the Non-Nuclear Safety Analysis Program, and perform an initial VPP readiness review. The team will also look at the ESH&Q Health Procedures and Systems, the Quality Assurance Program, QMS Readiness, IH Program and the Quality Control Program. The team will also compile an ESH&Q Report as part of the Final Readiness Review Report.

3.9 STOCKPILE STEWARDSHIP AND DEFENSE EXPERIMENTATION

The Director of Defense Experimentation and Stockpile Stewardship, Jim Holt, will have the overall lead for Defense Experimentation and Stockpile Stewardship transition activities. There are three sub elements under this functional area; Jim Holt will have primary oversight for Defense Experimentation, Ping Lee will have primary oversight for Test Readiness, and Dave Post will have primary oversight for Nuclear Operations. The details for Nuclear Operations are described in Section 3.2, this Section deals primarily with the sub elements of Defense Experimentation and Test Readiness.

In addition to mapping current employees into the new organization, Jim Holt and Ping Lee will lead teams to review the experimental programs and validate the current incumbent contractor test readiness plan as it pertains to M&O contractor operations. The review will entail a comprehensive evaluation of all personnel, physical assets, procedures, and infrastructure that are involved in the on-going experimental program or would be involved in a possible nuclear test. The reviews will be closely coordinated with the Weapons Laboratories, NSO and the incumbent contractor. If the review reveals that there are areas that could be improved or elements that are not in compliance with NSO M 450.X2, Underground Nuclear Testing, Test Readiness, and Threshold Test Ban Treaty Verification, that information will be documented and compiled in a Stockpile Stewardship Report and made part of the Final Readiness Review Report.

3.10 BUSINESS SYSTEMS

The Manager of Business Operations and CFO, Jack Stumpf, will lead the transition activities for Business Systems. In addition to mapping current employees into the new organization, his team will analyze and build an understanding of the existing business operations personnel, systems, processes, and infrastructure. Working with NSO, the incumbent contractor, and incumbent personnel, NSTec will determine the current operational criteria and performance baseline for all ongoing business operations.

During the first week of transition, Jack Stumpf, NSTec's CFO, will form his transition team, comprised of selected senior financial staff from NSTec, specialists from NSTec parent companies and, if available, stakeholders from NSO and NSO site user organizations.

The team will review all contracts/subcontracts and vendor agreements, novate contracts and prepare to integrate the subcontractors into the NSTec organization. The team will review CAS, GAAP, SAX, and FAR requirements. The team will also:

- Establish an NSTec employee database for payroll (test)

- Validate status of accounts payable and accounts receivable
- Validate FY06 baseline

In assessing the existing finance and budgeting systems, the team will ensure that the new NSTec employees are entered into Accounting and Finance System and 1st payroll is made on time. The team will then compile a Business Systems Report as part of the Final Readiness Review Report.

3.11 IT/COMMUNICATIONS

During transition, Michael Martin, our CIO, will lead the transition activities for IT/Communications. In addition to mapping current employees into the new organization, his team will be tasked with developing a complete understanding of the existing IT systems and how they are used by the Technical Operations functions that they support. The team will be staffed with a mix of senior business operations professionals from NSTec and its parent organizations. The team will meet with NSO designated personnel, incumbent staff, and all available NTS stakeholders to discuss and profile current operations. The deliverable produced by this team will identify strengths and any weaknesses of the existing systems and will develop proposed solutions for those weaknesses identified. This deliverable will be compiled as an IT/Communications Report and included as part of the Final Readiness Review Report. The team will also:

- Conduct a sample inventory and validation of all IT equipment
- Validate all software licensing and location of installed applications
- Perform a physical inventory of all communications equipment
- Validate the condition of all IT/Communications equipment

The basis of the team's suggested solutions will be limited to the implementation of lessons learned and technical solutions that can be implemented by the end of Transition and that have already been field tested and confirmed effective on other contracts. These proposed "fast-track" solutions will be presented to NSO for approval as part of the formal closeout report along with an implementation plan that includes a risk/return analysis and an associated risk mitigation plan.

4. MINIMIZING IMPACTS ON CONTINUITY OF OPERATIONS

NSTec's transition plan is comprehensive, controlled, time-sequenced, and tailored specifically to ensure minimum interruptions of ongoing services. NSTec will execute a transition plan that avoids or minimizes adverse impacts to ongoing NTS operations. This will be accomplished through continuous interface and regular meetings with NSO, incumbent contractors, and customers. Our approach takes into consideration that the NTS is a complex and uniquely challenging environment that encompasses over 1,100 facilities (nuclear and nonnuclear including high hazard operations) on a 1,375 square mile site in addition to satellite facilities across the country with a workforce of approximately 3,400 personnel.

NSTec developed its transition plan with careful attention to detail, and the interfaces and coordination between NSTec transition team members, the NSO, and the incumbent contractor outlined above are critical in preventing interruptions. We will hold regular joint meetings with the NSTec transition team, NSO, and incumbent contractors to maintain effective communication during transition. Meeting agendas will include a review of new and old business

to establish and track our agreed-upon expectations, to resolve issues, to review progress and metrics against critical transition success factors, and to assign action items for later meetings. NSTec will take detailed minutes and distribute them electronically to all participants within 24 hours. When and if disruptions are unavoidable, NSTec will schedule these disruptions in advance, will coordinate these events with the appropriate Contracting Officer's Technical Representative and the incumbent contractor, and will take appropriate actions to mitigate any adverse effects on ongoing operations.

5. IDENTIFYING KEY ISSUES AND MILESTONES

NSTec's Integrated Master Schedule for transition, presented at the end of this criterion, lists activities and milestones. Of these, we have identified 8 critical milestones that must be achieved and 4 key issues that must be resolved during the transition period. The critical milestones are:

- Mobilization of the transition Team to Las Vegas
- NSO approval of Transition Plan
- Accept transfer of incumbent personnel to the new contract by June 30, 2006
- Prepare employee benefit packages
- Prepare and validate payroll system
- Prepare and validate ES&H plan
- Prepare and submit Parent Organization Oversight Plan
- Validate the process to accept NSO assets that NSTec will control

The Transition Manager has primary responsibility for ensuring that these critical milestones are achieved in accordance with the Integrated Master Schedule.

The key issues are related to 1) safety; 2) incumbent employees, the contract's most valuable asset; 3) continuity in operations; and 4) communication and relationships. We address each of these issues in the following paragraphs.

1. Safety. This is our number 1 commitment as a contractor. It is the number 1 commitment of our General Manager, and the number 1 commitment of each of our key people. We will hold safety briefings at the beginning of each workday and at the commencement of each separate task or project. We will institute this discipline on the first day of transition. We will instill safety into our work planning as well as our work execution. We will develop a work culture where safety is foremost in the mind of each worker.

2. Incumbent Employees. Incumbent personnel constitute the principal resource for the contract. We recognize that contract transition is a time of considerable anxiety for incumbent employees and that first impressions are very important. At the first opportunity following contract award, we will communicate to incumbents our conviction that they are integral to our success as a contractor. We will assure them that all incumbent non-key employees will be offered a position with NSTec. We will share with incumbent employees our vision for the contract, our values, and our culture. We will not keep them guessing about our intentions, but will expedite delivery of information on transfer to the new contract and on compensation and benefit packages.

NSTec will place a full page advertisement in all relevant local papers upon notification of contract award to ensure incumbent employees understand that their employment will be transitioned directly to the NSTec Team with no loss of benefits, pay, or longevity. Other steps that we will take early in the transition period include:

- Establishment of employee website that answers frequently asked questions
- Establishment of employee outreach centers in the communities to allow face-to-face discussions regarding questions and concerns about the transition
- Establishment of an HR hot-line staffed with qualified personnel who are able to provide answers to questions and be responsive to concerns
- NSTec General Manager, Steve Younger, will address incumbent employees at scheduled meetings off-site during non-working hours to communicate his plan for contract execution
- Orientation that introduces them to NSTec, our culture, personnel policies, payroll procedures, work rules, and standard company practices such as safety and quality

3. Continuity in Operations. For NSTec this commitment is second only to safety. We are totally committed to the early identification and resolution of any problem or activity that would disrupt Contract operations. Our approach to achieving this is outlined in Section 1, with emphasis on regular meetings with NSO, incumbent contractors, and customers.

4. Communication and Relationships. This is the easiest issue to fail to address adequately because of the many and diverse relationships that the incoming contractor must develop. NSTec recognizes that our entire team must reach out and communicate openly and honestly with all NTS stakeholders. We understand that the bedrock of strong lasting relationships is partnership, and that will be the premise on which we will build relationships with NSO, the National Weapons Laboratories, the workforce, site contractors, and all stakeholders.

6. MITIGATING OR ELIMINATING BARRIERS TO A SMOOTH TRANSITION

In preparing our transition plan, we identified potential risks and mitigation strategies to ensure that ongoing NTS work is not disrupted and that our transition activities are performed on schedule and within budget. Table 3 summarizes transition risks and risk mitigation strategies.

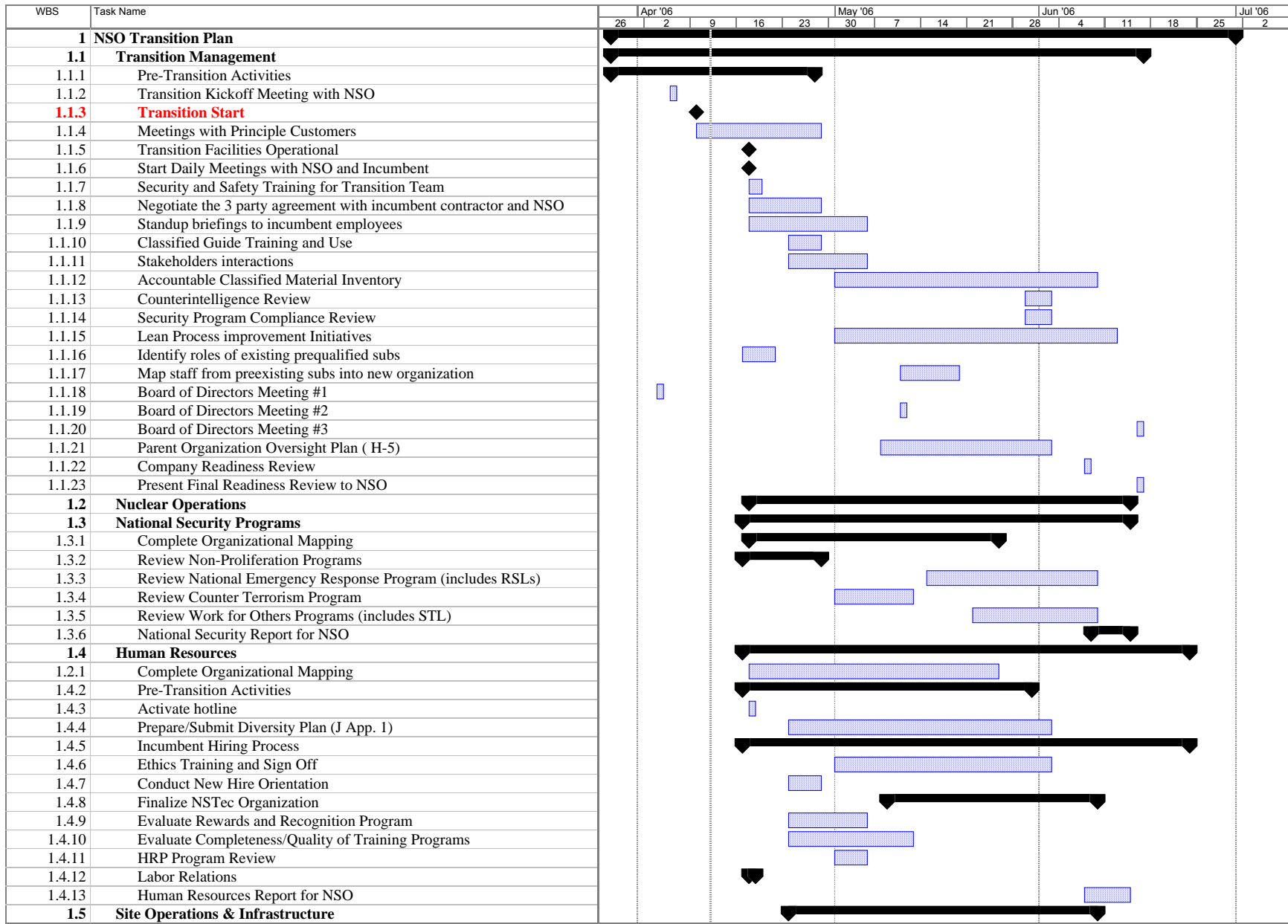
Table 3. Transition Risks and Mitigation Strategies. *We will continuously analyze and assess risks throughout the transition process and apply corrective/mitigation action.*

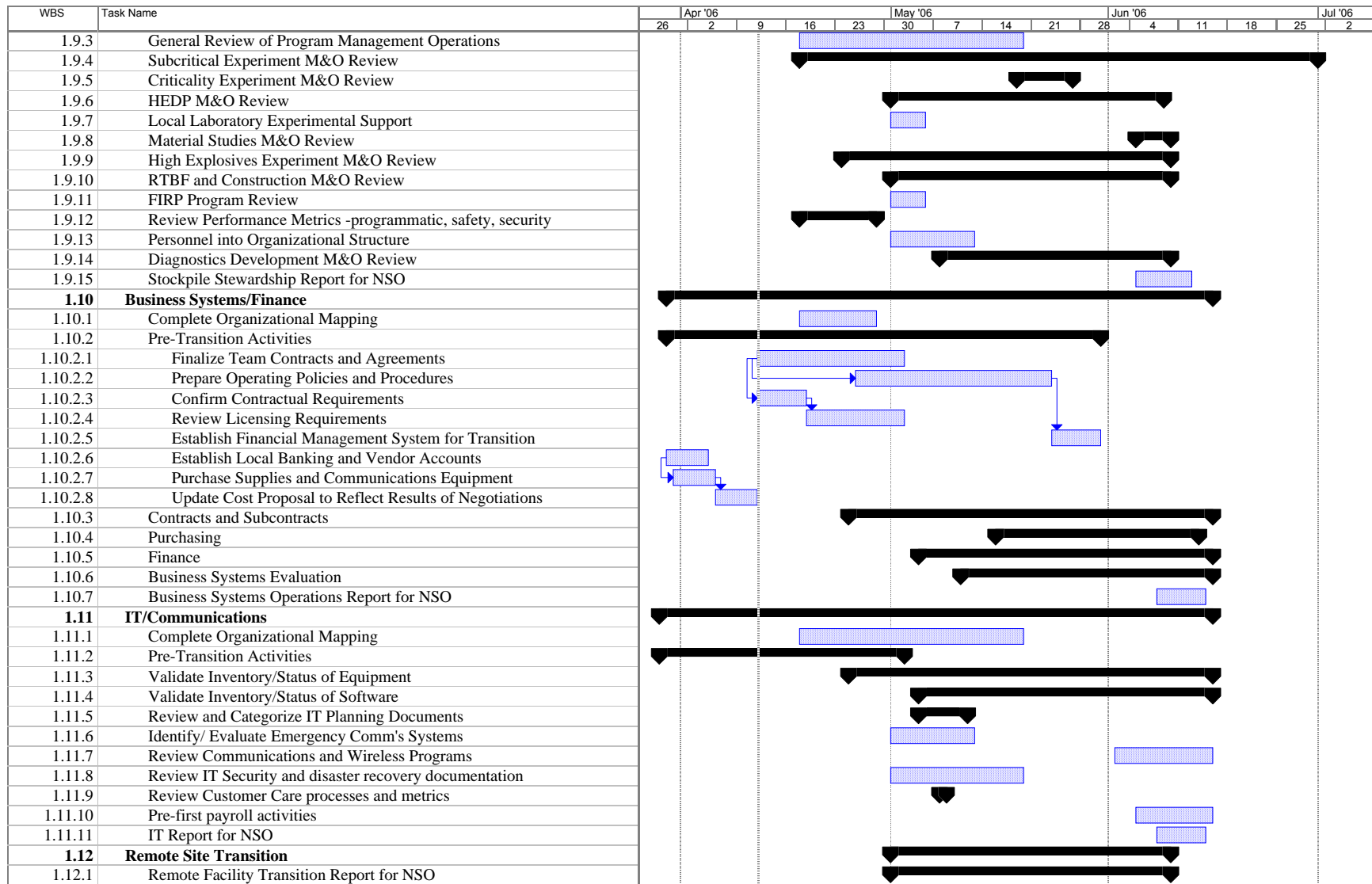
Potential Risk	Level	Mitigation Strategy	After
Transition activities by new contractor personnel who are unfamiliar with site hazards pose incident/accident risk	Medium to High	<ul style="list-style-type: none"> • Schedule facility specific safety briefings by the Facility Manager • Early and continuous safety awareness briefings to NSTec personnel • Daily safety briefings by the ESH&Q Manager prior to start of work • Use of the “buddy” strategy • Coordinate work with Bechtel Nevada • Prepare for working in harsh climate • Become familiar with NTS safety orders and procedures prior to arrival 	Low
Loss of key skills due to retirement of the incumbent personnel	Low to Medium	<ul style="list-style-type: none"> • Offer financial incentives to individuals to prolong their stay with NSTec • Recruit during transition to identify and 	Low

Potential Risk	Risk Level	Mitigation Strategy	Risk After
		hire key skills lost to retirements	
Failure to achieve operational readiness by July 1, 2006	Medium	<ul style="list-style-type: none"> • Assignment of a dedicated Transition Manager • Regular Readiness Reviews • Three performance assessments and reviews by parent organizations 	Low
Late award of contract shortens significantly 90-day transition period	Medium	<ul style="list-style-type: none"> • Develop contingency plan and transition organization to conduct transition in a reduced schedule. 	Low

7. IMPLEMENTATION SCHEDULE, IDENTIFYING MILESTONES AND MEASURABLE COMMITMENTS

NSTec has developed an Integrated Master Schedule that identifies milestones and measurable commitments. The critical path is identified in red and flows through the human resource/hiring process of the transition. The full schedule for NSO to review and approve upon contract award is presented in Table 4. Our personnel resource-loading associated with the Integrated Master Schedule is shown in Table 2. The proposed staged staffing is for the 90-day transition. This transition staffing will come from the corporate offices of NSTec parent companies and supporting subcontractors augmented by local resources and SMEs.





DE-AC52-06NA25946
Modification M003
Attachment G

SECTION J
APPENDIX H – SPECIAL FINANCIAL INSTITUTION
AGREEMENTS FOR USE WITH THE PAYMENTS-
CLEARED FINANCING ARRANGEMENTS

This document is incorporated by reference. Contact the NNSA Nevada Site Office Contracting Officer for more information at 702-295-1560.

Modification 242

Part III – List of Documents, Exhibits, and Other Attachments, Section J – List of Attachments, Appendix I, Diversity Plan, is modified by deleting the current contents and adding the 2015 Diversity Plan

Modification 209

Part III – List of Documents, Exhibits, and Other Attachments, Section J – List of Attachments, Appendix I, Diversity Plan, is modified by deleting the current contents and adding the 2014 Diversity Plan

Modification Number 121

Part III – List of Documents, Exhibits, and Other Attachments, Section J – List of Attachments, Appendix I, Diversity Plan, is modified by deleting the current contents and adding the 2011 Diversity Plan.

Modification Number 110

Part III – List of Documents, Exhibits, and Other Attachments, Section J – List of Attachments, Appendix I, Diversity Plan, is modified by deleting the current contents and adding the 2010 Diversity Plan.

Modification Number M056

Part III – List of Documents, Exhibits, and Other Attachments, Section J – List of Attachments, Appendix I, Diversity Plan, is modified by deleting the current contents and adding the 2009 Diversity Plan.

PART III – SECTION J

APPENDIX I - DIVERSITY PLAN

National Security Technologies, LLC

2015 Diversity Plan

April 2015

Prepared by
National Security Technologies, LLC
Employee Relations



National Security Technologies LLC
Vision • Service • Partnership

National Security Technologies, LLC, is an equal opportunity employer operating under contract to the Department of Energy under Contract No. DE-AC52-06NA25946.

**Diversity is opportunity,
it's all about you.**



National Security Technologies, LLC

2015 Diversity Plan

April 2015

Approved by:

Date:



C.W. Young
Labor Relations/Employee Relations Manager

18 MARCH 2015



Jack Stumpf
Director, Enterprise Services

18 MARCH 2015

Table of Contents

Acronyms.....	v
Definitions.....	vi
Preface.....	vii
In Praise of Cultural Diversity.....	viii
1.0 Diversity Statement.....	1
2.0 Diversity Council.....	2
2.1 Diversity Initiatives.....	2
3.0 Meet Your Diversity Council.....	3
4.0 Workforce.....	4
5.0 Recruitment and Retention.....	5
6.0 Educational Outreach.....	6
6.1 In-House/Outside Training.....	8
6.2 Programs in Place.....	9
6.3 Actions for 2015.....	9
7.0 Community Involvement and Outreach.....	10
7.1 Community Outreach.....	10
8.0 Subcontracting.....	12
8.1 Future Goals.....	13
9.0 Economic Development (including Technology Transfer).....	14
10.0 Prevention of Profiling.....	14
10.1 Programs in Place.....	14
10.2 Actions for 2015.....	14

Acronyms

AAP	Affirmative Action Plan
CCR	Central Contractor Registration
DHS	Department of Homeland Security
DI	Desktop Instruction
EEO	Equal Employment Opportunity
EETAP	Employee Education Training Assistance Program
ER	Employee Relations
HR	Human Resources
HUBZone	Historically Underutilized Business Zone
NSTec	National Security Technologies, LLC
NvE	Nevada Enterprise
OP	Organization Procedure
POC	Point of Contact
SNHEP	Southern Nevada Hispanic Employment Program
STEM	science, technology, engineering, and math
UNLV	University of Nevada, Las Vegas

Definitions

Affirmative Action – A good faith effort, driven by federal, state, and local law and executive orders, to ensure that minorities, women, special disabled veterans, Vietnam Era veterans and other covered veterans, and people with disabilities have fair representation and opportunities in the workplace.

Community Outreach – Company and employee involvement in activities supporting education in technical fields, community service organizations, and opportunities for minorities, women, and the disadvantaged in the local community.

Diversity – Differences in people, consisting of primary dimensions (race, ethnicity, gender, age, religion, disability, and sexual orientation) and secondary dimensions (communication style, work style, experience, organizational role or level, economic status, geographic origin, etc.).

Diversity Program – Managing diversity in a systematic way that promotes recognition of and respect for differences, and using those differences to create a successful, creative, and effective workplace.

Educational Outreach – Opportunities provided for employees to improve their employment skills, as well as programs supporting colleges and universities with a large percentage of females and minorities.

Equal Employment Opportunity – Freedom from discrimination in the terms and conditions of employment based on race, color, religion, sex, national origin, sexual orientation, disability, age, or covered veteran's status.

Minority – A person who falls within one of the following racial or ethnic groups as defined by the U.S. Department of Labor: American Indian or Alaskan Native, Asian, Black or African American, Native Hawaiian or other Pacific Islander, or Hispanic or Latino.

Profiling – Those practices that scrutinize, target, or treat employees or applicants for employment differently or single them out or select them for unjustified additional scrutiny, based on race or national origin.



Stakeholder – A person or entity that has a vested interest in operations conducted and/or managed by National Security Technologies, LLC (NSTec).

Technology Transfer – The process by which NSTec develops, transfers, or exchanges technologies and capabilities with related entities.

Preface

Formed in 2005, National Security Technologies, LLC (NSTec) is a joint venture between Northrop Grumman Corporation, AECOM, CH2M Hill, and Nuclear Fuel Services. This combination of diverse professional and scientific expertise allows NSTec to effectively manage operations at the Nevada National Security Site, its related facilities, and laboratories for the U.S. Department of Energy, National Nuclear Security Administration Nevada Field Office.

NSTec is excited about the future of the Nevada National Security Site and its associated facilities. Our vision is to transform this unique national resource into America's national security proving ground, the preferred place for conducting high-hazard experiments vital to the security of the United States. As a service organization, we exist to supply integrated solutions to the needs of our customers.

The workforce of today is ever changing. To succeed, we must be adaptable, flexible, and willing to embrace change. Our employees are our greatest asset and our success depends on how well we work together. Today's workplace is multicultural and based on men and women from all lifestyles, working alongside each other, sharing responsibilities and decision-making.

As forward-thinking leaders, NSTec will manage the diversity program by uniting our talented and committed workforce. We will provide an environment where all employees can make a maximum contribution to the company's success by drawing upon their many different perspectives, life experiences, and abilities.

This plan will identify the company's strategies and implementation processes for effective diversity management as outlined in the key areas of:

- ▶ **Workforce**
- ▶ **Recruitment and Retention**
- ▶ **Educational Outreach**
- ▶ **Community Involvement and Outreach**
- ▶ **Subcontracting**
- ▶ **Economic Development**
(including Technology Transfer)
- ▶ **Prevention of Profiling**

Diversity recognizes and accepts the differences and similarities of our workforce. By managing diversity, we promote recognition of, and respect for, our differences and use those differences to create a successful, creative, and effective workplace.



In Praise of Cultural Diversity ...

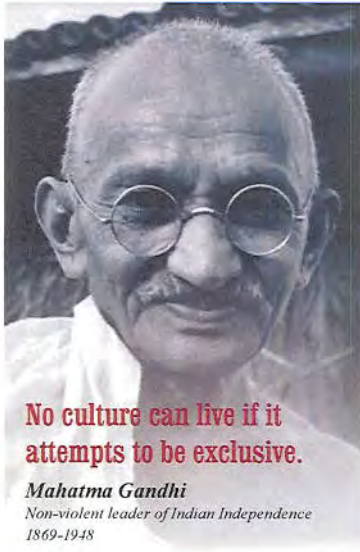
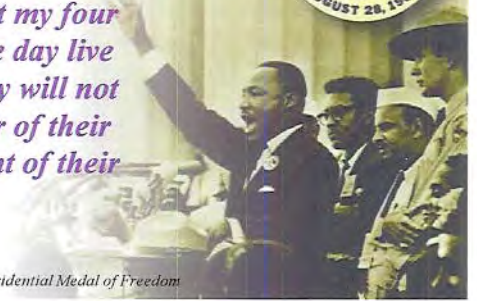


If civilization is to survive, we must cultivate the science of human relationships – the ability of all peoples, of all kinds, to live together, in the same world at peace.

Franklin D. Roosevelt
32nd President of the United States
1882-1945

...I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character...

Martin Luther King, Jr.
Clergyman, Activist
1964 Nobel Peace Prize Winner, 1977 Presidential Medal of Freedom

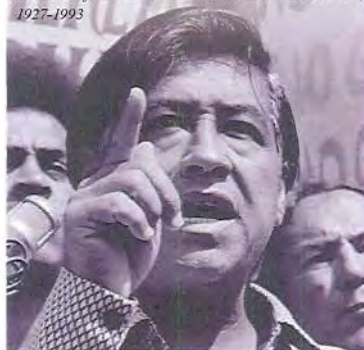


No culture can live if it attempts to be exclusive.

Mahatma Gandhi
Non-violent leader of Indian Independence
1869-1948

Preservation of one's own culture does not require contempt or disrespect for other cultures.

Cesar Chavez
American Activist and Labor Organizer
Founder of the National Farm Workers Association,
1927-1993



Our cultural strength has always been derived from our diversity of understanding and experience.

Yo-Yo Ma
French-born American Cellist
United Nations Messenger of Peace



Difference is the essence of humanity. Difference is an accident of birth, and it should therefore never be the source of hatred or conflict. Therein lies a most fundamental principle of peace: respect for diversity.

John Hume
Irish Politician, 1998 Nobel Peace Prize Winner, 1999 Defender of Democracy Award, 2001 Gandhi Peace Prize

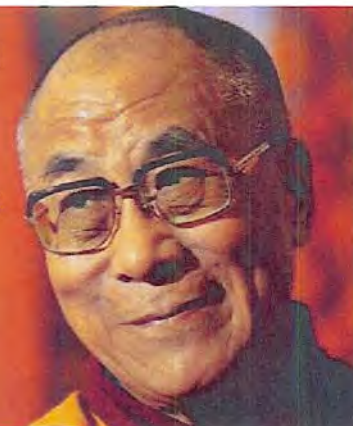


Peace is not unity in similarity but unity in diversity, in the comparison and conciliation of differences.

Mikhail Gorbachev
Russian Politician, Environmentalist, Social Activist, 1990 Nobel Peace Prize Winner

Internal peace is an essential first step to achieving peace in the world. How do you cultivate it? It's very simple. In the first place by realizing clearly that all mankind is one, that human beings in every country are members of one and the same family.

14th Dalai Lama
1989 Nobel Peace Prize Winner



We all should know that diversity makes for a rich tapestry, and we must understand that all the threads of the tapestry are equal in value no matter what their color.

Maya Angelou
African-American Poet,
Civil Rights Leader,
National Women's Hall of Fame



1.0 Diversity Statement

National Security Technologies, LLC (NSTec), is committed to creating and maintaining a diverse workforce that will foster a varied mix of skills and employee perspectives in a respectful environment. NSTec promotes an environment of continuous learning and minimizes diversity-related barriers in performance. NSTec will enhance diversity sensitivity, acceptance, and inclusion in all aspects of its business practices and relations with the community at large.

NSTec will promote, encourage, and support diversity management by doing the following:

- ▶ Include a diverse mix of skills and perspectives in developing and implementing programs that ensure consistency in operations.
- ▶ Establish an environment of continuous learning to provide training opportunities to supplement existing skills and create a more flexible workforce.
- ▶ Minimize barriers to performance that may occur when employees from different backgrounds and functions interact.
- ▶ Respond to unique interests of stakeholders and effectively utilize the diverse workforce to facilitate effective relationships with the community, vendors, suppliers, and others.
- ▶ Create an environment where employees take responsibility for their actions and are provided with the proper tools and skills to respond to problems and challenges while performing tasks.
- ▶ Treat all employees with respect and dignity.



2.0 Diversity Council

NSTec continues to demonstrate its commitment to diversity by fully supporting the NvE Diversity Council. Representing the broad spectrum of individuals within the NvE, the Diversity Council fosters an environment that promotes inclusion, equity, and respect to enhance the potential and contribution of all employees.

The Diversity Council continues to utilize its Vision Statement and Charter as the foundation for an ever-growing program. The Council is designed to promote awareness and understanding of diversity issues in the workplace by implementing and measuring diversity initiatives that align with the strategic goals of the company and building an organizational culture that supports diversity.

The 2015 Council Chair is Diana Lilley. Advisors are Robert Eason, Dennis Fulkerson, Pam Haynes, Dr. Raymond Juzaitis, and Wes Young.

2.1 Diversity Initiatives

One of the *Guiding Principles* of the NSTec Diversity Council, established in August 2006, was that the Council would, “Partner with our affiliated organizations within the Nevada Site Office to leverage resources and reach a wider audience.” In April of 2011, the NSTec Diversity Council transitioned to the Nevada Enterprise (NvE) Diversity Council. Combining all NvE entities allows organizations to eliminate duplication of efforts through planning and participating as one group in all diversity efforts. Members of the NvE Diversity Council include: NSTec, the Nevada Field Office (NFO), Epsilon, Navarro-Intera, the Centerra Nevada Team, Sandia Operations, and Pro2Serve.



While the primary purpose of the Council is to remove any barriers that stand between our employees and their success, at the same time, efforts continue to ensure that all employees are aware of their value within the organizations. In 2014, the Council's focus was on basic activities such as monthly awareness efforts. Diversity spotlighted several special events such as: Monthly Awareness contests and themes with articles presented in the Front Page. In collaboration with Training department, a Professional Development contest was held complex-wide utilizing Soft-

Skill online courses. This encouraged employees to enhance their professional skills at their leisure. Diversity participated in O&I's Safety Fair held in Mercury.

In recognition of Hispanic Heritage, NLV held a Floating Taco sale and LO had a Floating Taco Giveaway and Salsa contest. In honor of Veteran's Day, a personal reflection from an LO manager was published in the Front Page. RSL-Andrews held their New Year's Potluck as well as their Christmas Luncheon. A joint NSTEA and LAO diversity food drive was held for their local area's food pantry. All outlying locations held local events, potlucks, and cookouts.

In 2015, the Council will focus on expanding throughout the NvE to ensure that the activities and interest of all stakeholders have been incorporated into the Program. NSTec's diversity awareness has expanded from typical cultural awareness to include monthly messages addressing issues that are common to all cultures such as: American Heart, Child Abuse Prevention, Deaf History, Women's Equality, National Disability Employment, National Family Caregivers, and Human Rights. Special activities will be planned and scheduled; this will include changing out some monthly awareness efforts to expand recognition to other Heritage Months thereby enhancing the diversity of individuals in the company and to maximize each individual's contribution.

The Council continues to live up to its motto ...

The logo consists of a small graphic of four colored squares (red, green, yellow, purple) arranged in a 2x2 grid to the left of the text "Diversity is opportunity, it's all about you!". "Diversity is opportunity," is in a blue, sans-serif font, and "it's all about you!" is in a larger, blue, cursive font.

**Diversity is opportunity,
it's all about you!**

3.0 Meet your Diversity Council



Diana Lilley
Chair



Derek Aberle



Steve Arner



Ariel Borders



Michael Curtis



Gwendolyn Gardner



Jerry Griggs



Timothy Henderson



Mary Lou Hewitt



Robert Kilroy



Gabriel Kline



Jodi Navarrette



Cassandra Peterson



Barbara Ulmer



Robert Eason
Advisor



Dennis Fulkerson
Advisor



Pam Haynes
Advisor



Dr. Raymond J. Juzaitis
Advisor



Wes Young
Advisor

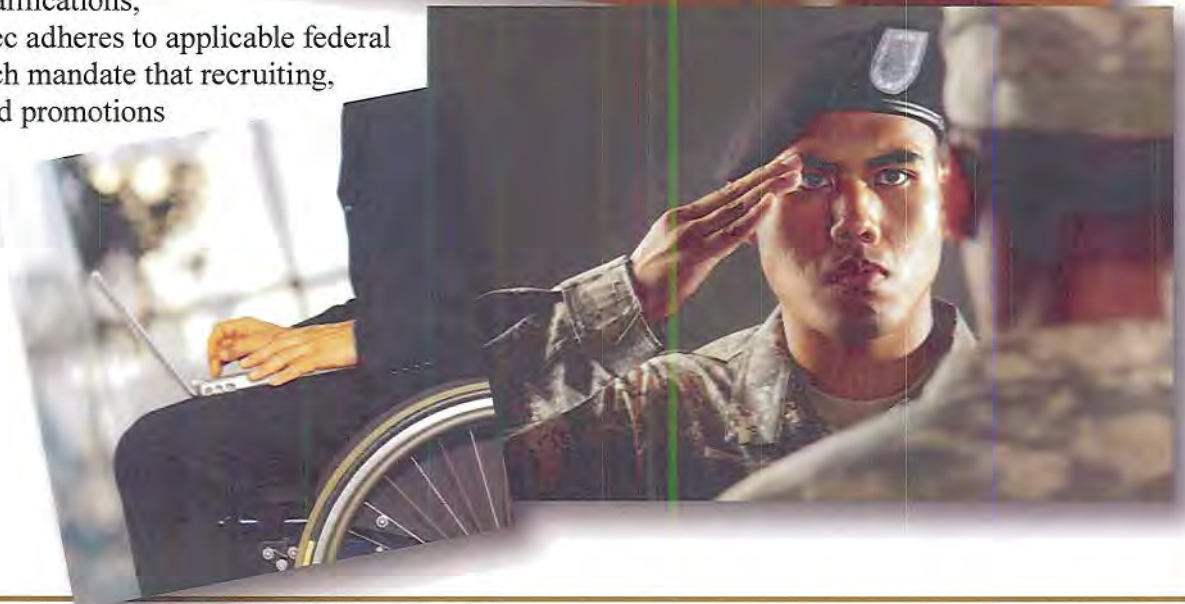
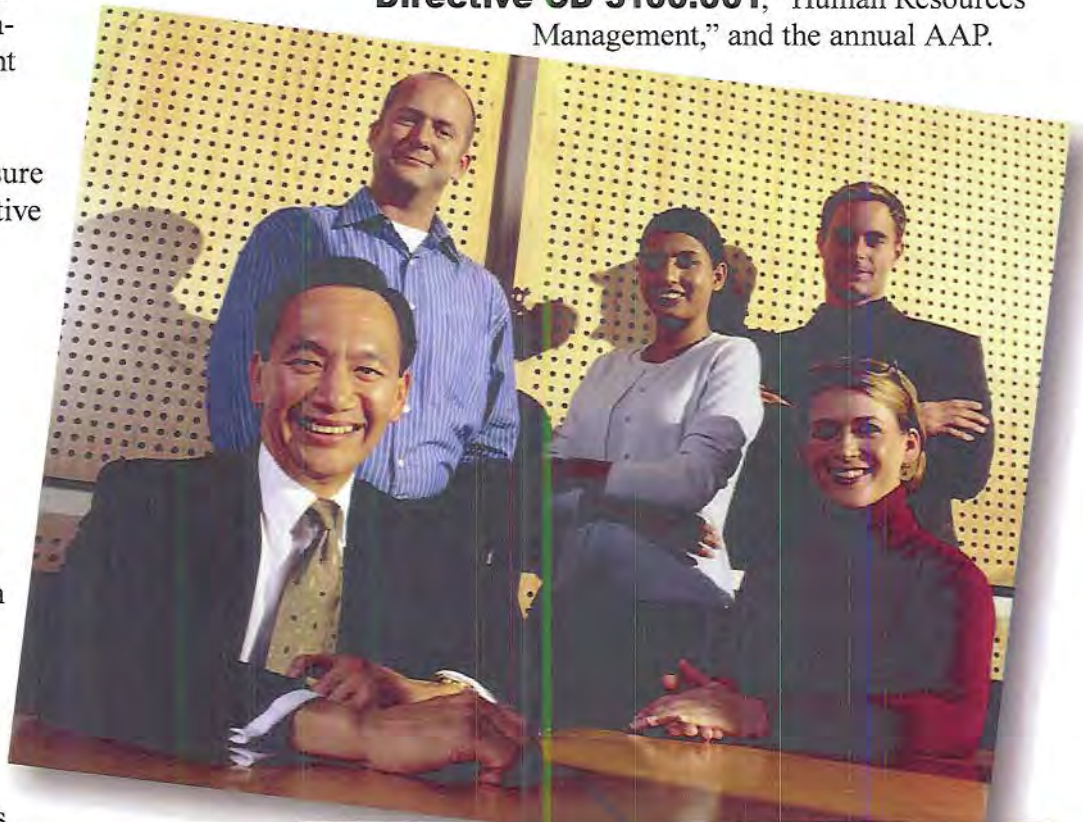
4.0 Workforce

NSTec has adopted an **Affirmative Action Plan (AAP)** which reflects its commitment to provide equal employment opportunities. NSTec is committed to providing equal employment opportunities to all persons regardless of race, color, religion, sex, national origin, sexual orientation, disability, age, or covered veterans status. NSTec complies with applicable state and local laws governing non-discrimination in employment in every location in which the company has facilities. Assessments of our AAP ensure compliance with our affirmative action goals.

Workforce diversity is a management priority. Maintaining an agile, competent, and motivated workforce will be accomplished through recruitment, retention, skills enhancement, and succession planning. We strive for a more diverse workforce in our recruitment, hiring, and personnel actions. Employment decisions are based on merit, qualifications, and abilities. NSTec adheres to applicable federal and state laws which mandate that recruiting, hiring, training, and promotions

be based on job-related factors and bona fide occupational requirements regardless of race, color, religion, sex, national origin, sexual orientation, disability, age, or covered veteran status.

Diversity initiatives for the workforce are driven by EEO, and are reflected in the **Company Directive CD 3100.001**, "Human Resources Management," and the annual AAP.



5.0 Recruitment and Retention

NSTec is committed to creating an inclusive and multi-talented workforce and will work to increase the organization's diversity by recruiting and retaining quality employees. For recruiting, selection, and promotions, we will draw from a diverse population.

Human Resources (HR) will take a leadership role working with our customers and the hiring managers to ensure that NSTec recruitment goals are met or exceeded. We will use the following strategies to ensure an effective recruitment process:

- ▶ Identify methods of recognizing and attracting qualified candidates.
 - ▶ Contact the Nevada State Job Service to list regular employment openings (except executive and top management positions, positions that will be filled from within, and bargaining unit positions that are filled by the unions).
 - ▶ Review college hire program consistent with dynamic changes in our economic environment.
 - ▶ Develop resources to improve applicant flow for experienced female and minority applicants. This could include sourcing companies, minority/diversity job fairs, and working with technical professional organizations in which females and minorities are well represented.
 - ▶ Develop and maintain a presence in schools with a high level of representation of women and minorities in their engineering and science programs.
 - ▶ Establish strong relationships with minority schools, historical black colleges and universities, and colleges with large percentages of females and minorities.
- ▶ Implemented companywide Annual Talent Review to integrate goals in the NSTec Strategic Framework Implementer, succession planning, assessment of potential (Nine-Box Matrix), and identification and development of high-potential employees. The integration of these processes, which will expand in FY 2015 to include performance management and individual development, supports goals to increase internal bench strength, retention of high-potential employees, and diversity and employee engagement.
 - ▶ Based on available funding, participate in the following organizations' national job fairs:
 - Society of Women Engineers (SWE)
 - National Society of Black Engineers (NSBE)
 - Society of Mexican-American Engineers and Scientists (MAES)
 - American Indians Science and Engineering Society (AISES)
 - Society of Hispanic Professional Engineers (SHPE)
 - ▶ Improve hiring of veterans, particularly those who are veterans of the Iraq and Afghanistan conflicts, by utilizing more veteran-affiliated sources such as **militaryvetsjobs.com**, **CivilianJobs.com**, **Helmets to Hardhats**, **hireahero.org**, **military.com**, **Recruitmilitary.com**, and private organizations that work extensively with recently separated veterans.



The following entities are currently in NSTec's recruiting strategy:

- ▶ **American Indian Science and Engineering Society**
- ▶ **Louisiana Tech University**
- ▶ **Society of Mexican-American Engineers and Scientists**
- ▶ **National Guard Homecoming Job Fair**
- ▶ **National Society of Black Engineers**
- ▶ **Society of Women Engineers**
- ▶ **University of Nevada, Las Vegas (UNLV) Minority Engineering Program**



6.0 Educational Outreach

NSTec employees are provided opportunities to improve their skills and employment options through training, seminars, and education programs. Continuing education is encouraged and essential to the continued professional development of each employee. We believe that the best way to improve the business is to improve the workforce.

NSTec extends this commitment to education by sponsoring the following programs:

- **Focus School Program**

NSTec partners with two at-risk schools, Kit Carson College Preparatory Academy of Creative Arts and Technology and Jim Bridger Middle School, which also house magnet programs for robotics, aerospace and aviation, biomedicine, and computer technology. Employees are encouraged to participate in key partnership activities that include an annual back-to-school supply drive; holiday food drives to benefit

students and their families; and e-mentoring. NSTec provides sponsorship of student achievement awards, graduation ceremonies, and other activities on an annual basis consistent with the needs of the school. In prior years, NSTec has provided funding to purchase school marquees, and a grant to the Desert Research Institute to sponsor a Green Power solar panel. Jim Bridger's school marquee was the first in Clark County to be powered using solar energy. In support of these two Focus Schools in FY 2014, NSTec:

- ▶ Donated \$10,000 to the Goodie Two Shoes Foundation to sponsor a shoe distribution day at Kit Carson
- ▶ Adopted 21 families (83 children and 36 adults) by collecting more than \$16,000 in employee donations of holiday meals and gifts for families that might otherwise go without

- ▶ Participated in Kit Carson Career Day and provided face-to-face mentoring for Jim Bridger at-risk students
- ▶ Donated \$3,800 to Kit Carson to support the 5th grade graduation ceremony, teacher appreciation and recognition, and an end-of-the-year luncheon for community and parent volunteers
- **U.S. Department of Energy's Regional Science Bowl**

Established in 1991 by the U.S. Department of Energy, the Science Bowl competition is designed to motivate high school students to pursue scientific and technical careers and promote science and mathematics literacy. NSTec coordinates the annual high school and middle school regional events on behalf of the National Nuclear Security Administration Nevada Field Office, and has provided significant financial sponsorship as well. The program brings together teams of students from Nevada, California, Arizona, and Utah schools. Many employees volunteer to serve as moderators, scientific judges, rule judges, timekeepers, scorekeepers, and messengers during the day-long competition. NSTec also provides financial support for both events through the NSTec Education Development Fund.

- **NSTec Science and Engineering Scholarships**

The NSTec Engineering and Science Scholarship program provides scholarship opportunities in all of the company's primary operating locations and Nye County, Nevada. The program is open to high school seniors pursuing a degree in engineering or science at a four-year college or university. To date, NSTec has awarded 113 scholarships totaling \$565,000 to student achievers in Clark and Nye Counties, Nevada; Livermore and Santa Barbara, California; and Northern New Mexico. Recipients receive \$5,000 and an opportunity for a summer internship. Many of the scholarship winners have returned to serve internships at the Nevada National Security Site; North Las Vegas; Livermore, California; and Los Alamos, New Mexico.

- **NSTec National Security Scholarship**

NSTec partnered with the University of Nevada, Las Vegas (UNLV) Colleges of Engineering and Sciences to create an NSTec National Security Scholarship in 2014 to develop students who can transition directly into the workforce at the Nevada National Security Site. NSTec endowed the scholarship fund with an initial investment of \$50,000 and participated in the selection committee to identify scholarship recipients for the Fall 2014 semester. The overall vision for the partnership is collaboration between NSTec and UNLV to promote research and development in areas of importance for our national security mission as well as develop interdisciplinary programs and internship opportunities that will build relationships between students and NSTec.

- **NSTec Family Scholarship Program**

The NSTec Scholarship Program provides financial assistance for dependent children of NSTec employees. Created in 2008, the program has awarded 66 scholarships totaling \$268,000 to a diverse group of students in Las Vegas, Nevada; Pahrump, Nevada; Livermore, California; Santa Barbara, California; and Los Alamos, New Mexico. Scholarships are awarded based on overall scholastic performance, a written essay, a personal interview, and financial need.

- **UNLV Multicultural Engineering Program**

NSTec has donated \$10,000 to support scholarships for the UNLV Multicultural Engineering Program. The Multicultural Engineering Program is open to all students. It has been designed to focus on assisting underrepresented populations, such as African-American, Hispanic, American Indian, and women students to pursue an education in the disciplines of engineering and computer science. In 2010, NSTec established a named scholarship to benefit a student in the UNLV Multicultural Engineering Program.

- **Education Development Fund**

The NSTec Education Development Fund supports diverse and sustainable education programs focused on improving science, technology, engineering, and math

(STEM) at the elementary school, middle school, high school, and collegiate levels. To date, the company has committed over \$1.5 million in educational awards that enhance STEM education. Examples include:

- ▶ **\$500,000** – UNLV new Science and Engineering Building
- ▶ **\$425,000** – First Robotics Las Vegas regional competition
- ▶ **\$100,000** – NSTec STEM Innovative Instruction Grants
- ▶ **\$80,500** – Louisiana Tech University (Industrial Partners Program, National Society of Black Engineers, and Eco Car Contest)
- ▶ **\$76,475** – Regional Science Bowl High School and Middle School Competitions
- ▶ **\$55,000** – Lied Discovery Museum Sponsorship
- ▶ **\$54,100** – CCSD Northwest Career and Technical Academy
- ▶ **\$35,000** – Atomic Testing Museum (Transportation for student field trips)
- ▶ **\$20,000** – Enhance PITSCO science lab at Rosemary Clark Middle School in Pahrump
- ▶ **\$16,000** – Indian Springs Elementary School Science Fair (\$2,000/year for 8 years to ensure sustainability)

- **Internships**

Summer Internship Program (college). NSTec offers internships to provide technical assistance, fill staffing gaps, and enhance the company's reputation on campus with students who often accept full-time positions upon graduation. Several of the summer internships offered have been filled by NSTec Engineering and Science Scholarship recipients.



Clark County Summer Business Institute (high school). NSTec provides financial support, internships, and mentoring for Clark County high school juniors, seniors, and recent graduates through this 8-week internship. Students have worked 8-hour days Monday through Thursday in NSTec organizations like the Chief Financial Office, Occupational Medicine, Information Services, Human Resources, Document Control, Communications, Counter Terrorism and Operations Support, and Operations and Infrastructure. The support provided by these students equates to almost four full-time equivalents in value-added labor for the four years that NSTec has sponsored this program. The students are paid by Clark County as part of the program using grants like those provided by NSTec.

Military Academies (college). Each summer, since 2007, NSTec has sponsored U.S. Air Force Academy and/or U.S. Naval Academy internships. Cadets are paid by their respective academy and NSTec has provided non-contract funding for all travel and housing expenses.

Department of Homeland Security (DHS) Scholars and Fellows (college). NSTec has sponsored students as part of the DHS Scholars and Fellows program. Participants are paid by DHS and NSTec provides a housing stipend during the 10-week internship where students assist with real-world problem-solving at one of NSTec's operating locations.

6.1 In-House/Outside Training

Nonbargaining NSTec employees are provided opportunities to improve their skills and employment options through training, seminars, and education programs. A portion of NSTec's wage package for bargaining employees is directed to the unions' Training Trust programs. NSTec offers site-specific training for bargaining employees.

6.2 Programs in Place

- ▶ Equal Opportunity, Affirmative Action, and Diversity topics are included in NSTec's supervisory training sessions.
- ▶ NSTec's Employee Education Training Assistance Program (EETAP) covers some costs of coursework (up to \$5,000 per employee per fiscal year) at accredited colleges and universities that pertains to a nonbargaining employee's current position or one that the employee could achieve at NSTec. This includes tuition, required textbooks, and fees, when certain conditions are met. Additional courses required for degree programs but not eligible for regular EETAP reimbursement may be covered through the EETAP Supplemental Program, which provides up to \$1,500 per employee per fiscal year for qualifying courses. Employees may also use the Supplemental Funds (up to \$1,500 per employee) for costs incurred above the \$5,000 per person limit for regular EETAP-approved courses.
- ▶ NSTec makes available over 894 courses and briefings on job-related topics through instructor-led, computer-based, or web-based training. Topics include environment, safety and health, computer software, management, project management, conduct of operations, nuclear safety, and other job-specific skills.
- ▶ NSTec has a Distance Learning web-site available through Skillsoft Corporation that provides access to Business, Desktop Computer application, and Information Technology specialized web-based training



courses. It also provides access to Business Books 24/7 (online business reference books), SkillSims (simulations), and other learning tools to support business, computer skills, management, learning programs for supervisors, and leadership topics. Skillsoft users can also access Chapters-to-Go, a mobile app that allows access to books 24/7, desktop videos, and short video lessons on a specific desktop computer application topic. Skillsoft courses and events are available at no cost to bargaining and nonbargaining NSTec employees and can be accessed from work or home computers.

- ▶ Employees have opportunities to attend seminars, conferences, and outside training courses that are related to their current assignment (when budgets allow and DOE approval is given).
- ▶ ER presents informal Diversity training sessions upon request.

6.3 Actions for 2015

- ▶ Continue each of the above-mentioned programs and enhance the Skillsoft program offerings by adding specialty Information Technology courseware that supports certifications like C++ and Engineering-related documents through Skillsoft's Engineering Pro feature.
- ▶ Continue using WEBEX software to provide access to 'webinars' (web-based seminars) provided by in-house sources. These web-based events allow more participants to complete training without requiring travel or per diem costs for external events.

7.0 Community Involvement and Outreach

NSTec is committed to being a responsible corporate citizen through addressing many important issues facing our communities today. Diversity is important to us; as a company, we interact with diverse communities as a resource for employment, education, and commercial ventures. Additionally, we support organizations that promote the interests of minorities and women as well as other diversity dimensions.

To build strong community relations, we focus on several areas where time, effort, and energy are expended to achieve effective results.

NSTec's volunteerism was recognized with a Nevada Volunteers Point of Light Award in 2010.

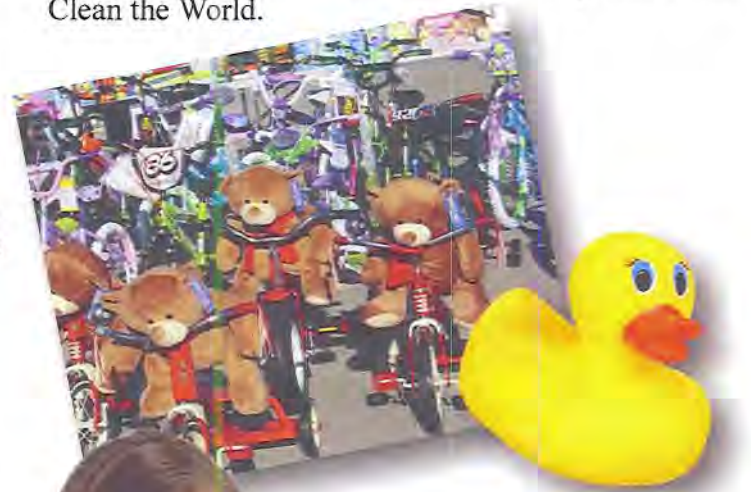
7.1 Community Outreach

Chambers of Commerce – NSTec is an active member of the Latin, Asian, Urban, North Las Vegas, and Women's Chambers of Commerce. In addition to participating in monthly luncheons, NSTec provides event sponsorship in activities such as the Latin Chamber of Commerce Career Day.

Opportunity Village – NSTec is a strong supporter of Opportunity Village and provides sponsorship and volunteers for the Magical Forest each year. We also field a team to compete in The Great Santa Run. Since 2006, we have had over 780 employees and their families and friends help Las Vegas beat the world record for number of Santas congregated in one place.

United Way of Southern Nevada – For the 2015 campaign, NSTec employees pledged over \$290,000 to the annual campaign, which benefits residents in Southern Nevada. NSTec has served as a pace setter campaign for several years and is consistently recognized as a top employee campaign by United Way.

The Network – NSTec's "The Network" is an employee-led internal networking and professional development organization that leverages all elements of our diverse workforce and promotes working together. During FY 2014, The Network hosted 23 different events focused on professional development, community outreach, networking, or teambuilding. Events included "Business Writing 101" and "Volunteerism and Leadership" workshops, a scavenger hunt in downtown Las Vegas, and several volunteer activities. The Network was recognized for an Outstanding Contribution by Three Square for their volunteer hours, which helped over 100,000 people in Southern Nevada. The Network also coordinated NSTec volunteer activities for FIRST Robotics competitions and Clean the World.



U.S. Marines' Toys for Tots –

NSTec sponsors a drive each year to collect toys and bicycles to donate to this nationwide program. In 2014, NSTec employees donated 17 toy stuffed barrels and 123 new bicycles and tricycles to the Marines.

Salvation Army Angel Tree Program

– NSTec sponsors the program each year, allowing employees to “adopt” an angel through this program. The program benefits approximately 7,000 less fortunate children in Southern Nevada that might not receive any gifts during the holiday season. In 2014, employees adopted 100 angels, providing gifts worth almost \$5,600.

Rebuilding Together (formerly Christmas in April)

– NSTec sponsors rebuilding projects in both North Las Vegas and Pahrump, Nevada. In addition to considerable financial support, teams of employees donate their time to help with repairs, painting, landscaping, cleaning, moving furniture, and other necessary tasks.

Charitable Contributions – In 2006, NSTec created NSTec Cares to provide employees, charitable organizations, and stakeholders an opportunity to request charitable contributions.

The program focuses donations in three areas: education, diversity, and civic/community relations. Through 2014, the program has given more than \$500,000 to deserving organizations.

Our Actions Make a Difference

– To recognize and reward employee volunteer efforts, NSTec donates \$5 for every volunteer hour donated by employees in support of

charitable, educational, or professional organizations. Since January 2008, employees have donated over 23,000 hours and NSTec has donated over \$65,000 on their behalf.

Community Services Team

– Developed by the Administrative Council, this team of administrative professionals identifies a different charitable organization annually and actively supports activities of that organization by volunteering time and talents.

Southern Nevada Hispanic Employment Program (SNHEP)

– NSTec has provided scholarship funds and conference support to the SNHEP. Numerous individuals who have been scholarship recipients currently work for the company.



8.0 Subcontracting

NSTec is committed to maintaining a culturally and economically diverse environment. Small businesses are the backbone of our American economy. NSTec recognizes and welcomes the expertise and knowledge provided by small and disadvantaged businesses. *We continuously seek to build relationships* with those businesses that can meet and exceed our standards of excellence in support of our work for the U.S. Federal Government. We accomplish this by participating in fairs and workshops in Las Vegas as well as networking with state and national organizations. In addition, NSTec works closely with:

- ▶ Small Business organizations within the local community, including the SNHEP and the Nevada Minority Business Council.
- ▶ U.S. Department of Energy/National Nuclear Security Administration Small Business Program Managers Forum.
- ▶ The Office of Small and Disadvantaged Business Utilization and the Small Business Administration.

NSTec incorporates a Small Business Review process to encourage the use of Small Businesses by reviewing any orders over \$25,000. The orders are reviewed by the Compliance Manager or Procurement Manager.

Procurement maintains and utilizes a Small Business database and encourages interested suppliers to register and be categorized by socio-economic status and commodity type by working with a central point of contact (POC) at NSTec. The Small Business database allows the Procurement Department to have a centralized file of businesses that have shown interest in doing business with the company. The POC passes this information on to NSTec procurement specialists.

Procurement also utilizes the Central Contractor Registration (CCR) database (www.ccr.gov), the primary registrant database for the U.S. Federal Government, when developing bidder's lists. Accordingly, potential suppliers are encouraged to register on this site to maximize opportunities not only with NSTec but also with federal government agencies or other government contractors.



Our Small Business Plan describes our goals and approach involving small business in the categories of Veteran-Owned Small Business, Service-Disabled Veteran-Owned Small Business, Historically Underutilized Business Zone (HUBZone) Small Business, Small Disadvantaged Business, and Women-Owned Small Business.



CATEGORY	FISCAL YEAR GOAL
Small Business	55%
Small Disadvantaged Business	6%
Small Woman-Owned Business	6%
Small Veteran-Owned Business	15%
Small Service-Disabled Veteran-Owned Business	2%
HUBZone	2%

We comply with the following desktop instructions (DIs) and organization procedures (OPs) that reference the socioeconomic requirements for Procurement:

- ▶ **DI-700.105, “Equal Employment Opportunity (EEO)”**
- ▶ **DI-700.301, “Acquisition Planning”**
- ▶ **DI-700.302, “Sources of Competition”**
- ▶ **DI-700.304, “Simplified Acquisitions”**
- ▶ **DI-700.305, “Government Supply Sources”**
- ▶ **DI-700.402, “Subcontracting Plan”**
- ▶ **OP-FC20.101, “Mission Statement”**
- ▶ **OP-FC20.105, “Ratifications”**
- ▶ **OP-FC20.106, “Subcontracting Under the U.S. Department of Energy (DOE) 8(a) Pilot Program”**
- ▶ **OP-FC20.109, “Noncompetitive Procurements”**

8.1 Future Goals

NSTec is committed to accomplishing the Small Business goals and seeking additional opportunities or programs that encourage the use of small businesses. In the future, it is desired to develop and implement a Mentor Protégé Program, where specific training and knowledge sharing between NSTec and future Protégés can particularly enhance the capabilities of small businesses, helping them to become more viable for government subcontracting.



9.0 Economic Development (including Technology Transfer)

NSTec conducts science and technology activities that benefit the Las Vegas community and stimulate the economy. It collaborates with local and national universities to promote technology transfer efforts and has entered into partnership arrangements with UNLV and the University of Nevada Reno, for broader access to university faculty, recruiting of university graduates to sustain a technical workforce, and increasing business activity. NSTec employees participate in conferences and symposiums and publish numerous journal articles. NSTec signed an agreement with the national laboratories, which is intended to identify and increase commercialization opportunities by “bundling” NSTec technologies with the technologies of the national laboratories.

10.0 Prevention of Profiling

The policies and directives listed in the “Workforce” section of this plan prohibit treating employees or applicants differently based on several characteristics, including race, color, and national origin.

10.1 Programs in Place

ER analyzes employment policies, practices, and decisions to hire or terminate to ensure fair, equitable consideration for all employees and applicants.

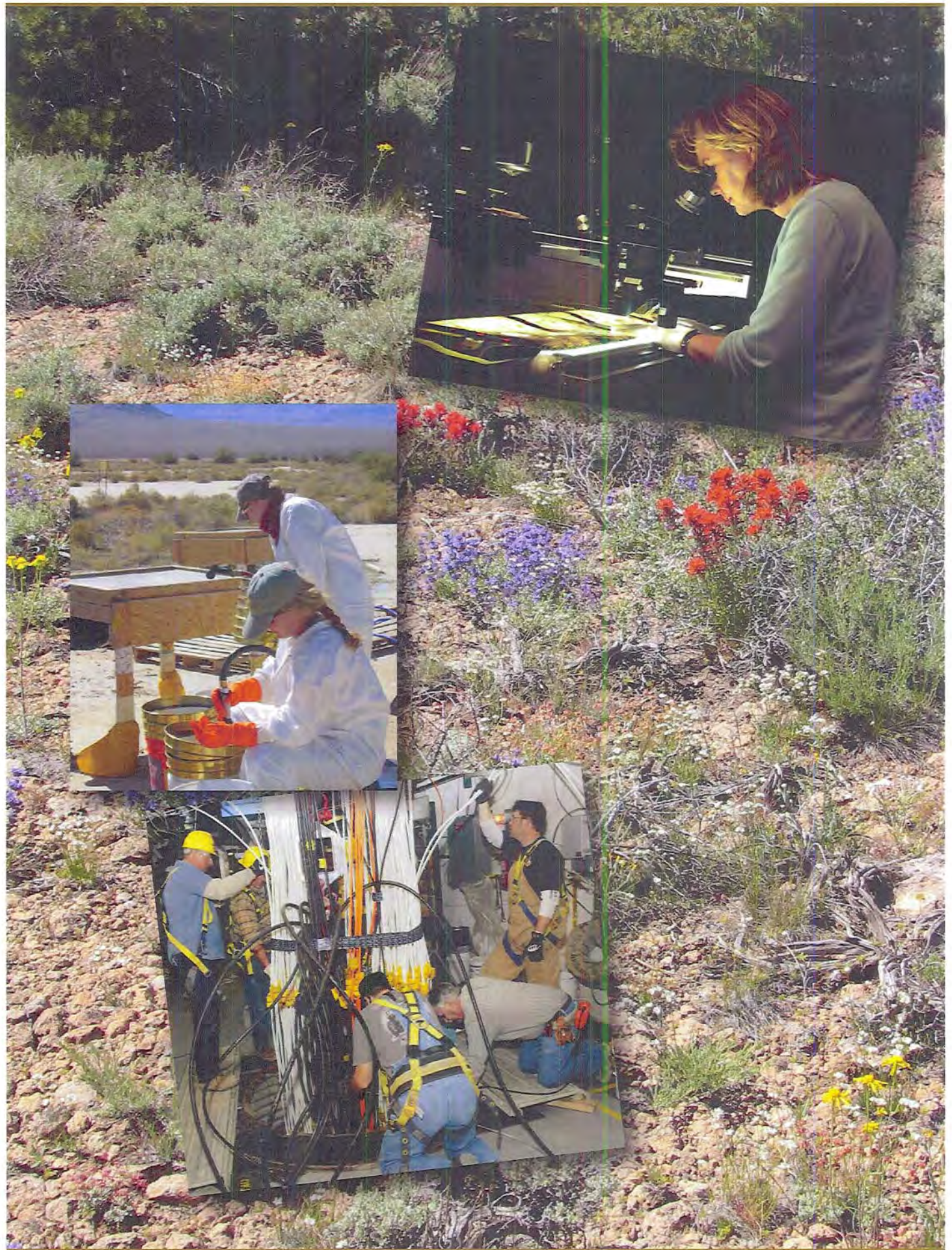
Managers who violate NSTec policies on diversity risk having adverse action taken against them.

ER also conducts investigations and expedites timely resolution of discrimination and harassment allegations.

10.2 Actions for 2015

ER will continue to conduct and oversee fair and impartial investigations in an expeditious manner, provide support to the Disciplinary Action Review Board and serve as advisors to the NvE Diversity Council.





National Security Technologies^{LLC}

Vision • Service • Partnership

National Security Technologies, LLC, is an equal opportunity employer operating under contract to the Department of Energy under Contract No. DE-AC52-06NA25946.



DE-AC52-06NA25946
Modification M003
Attachment H

SECTION J
APPENDIX J – PARENT ORGANIZATION OVERSIGHT PLAN

PARENT ORGANIZATION OVERSIGHT PLAN

NATIONAL SECURITY TECHNOLOGIES, LLC

Introduction

National Security Technologies, LLC (NSTec) is committed to bringing outstanding management and technical support to current and future NTS missions. In our proposal, we outline a number of initiatives that will substantially improve the efficiency of our operation of NTS and its satellite facilities. Many of these ideas, such as Reliability Centered Maintenance, Lean processes, VPP Star status, and the use of a proven enterprise resource program, have already been demonstrated by our corporate partners at sites of similar complexity to the NTS.

We have developed a concept that provides parent organizational monitoring of NSTec's performance of the Statement of Work and assistance to meet programmatic missions and operational requirements. The plan involves two principal and linked components:

- A **Board of Directors** (Board) will be established consisting of eight senior managers: four from our managing partner Northrop Grumman, two from AECOM, and one each from CH2MHILL and Nuclear Fuel Services (NFS). The purpose of the Board is to provide overall management and fiduciary oversight and to assist NSTec in meeting programmatic mission and operational requirements.
- A **Parent Organization Oversight Committee** (POOC) will be created, with flexible membership, to function as expert staff to the Board. The POOC provides assistance and recommendations to the Board of Directors on key issues affecting NSTec performance, from safety to the evaluation of key technical programs. The POOC will also assist in corporate reachback for capabilities to enhance operations.

Recognizing the cost-critical sensitivities of the NNSA budget, NSTec seeks to demonstrate our corporate commitment by waiving all cost associated with the priced elements of the Transition Plan and the Parent Organization Oversight Plan in order to provide best value to the government.

The first Parent Organization Oversight Plan, comprising the periods July–September 2006 and October 2006–September 2007, is included in this submission. In each subsequent period, a detailed Parent Organization Oversight Plan will be developed, reviewed, and submitted to the Contracting Officer 6 months prior to the start of each fiscal year.

All of the activities conducted as part of parent organization support will conform to the Federal Acquisition Regulations and DOE Acquisition Regulation Supplements (DEARS) Cost Principles and will be consistent with the Cost Accounting Standards Board (CASB) Disclosure Statements (CASB/DS) for all operating elements of NSTec, the parent organization, Northrop Grumman Corporation, and affiliates. All incurred costs for NSTec and the parent organization will be subject to full disclosure and U.S. Government audit. The NSTec Board will administer the Parent Organization Oversight Plan. To ensure that all approved findings, recommendations, and suggestions from the POOC are formally incorporated into the program, tracked by the Board members, and implemented by NSTec senior staff. A summary of each fiscal year's oversight activities will be presented to NSO and the contracting officer.

Board of Directors

The Board is the directive element of the oversight plan and is responsible only to the parent companies. It has the full authority to establish LLC policy and provide directions as needed to the NSTec General Manager in his role as the senior LLC official. The Board will focus on the

operation of NSTec, LLC *as a company* to ensure that it is managed and operated according to best business practices. The General Manager of NSTec will report to and be responsible to the Board for the life of this contract. The Board will appoint the General Manager and will evaluate his performance on an annual basis, including setting compensation. In addition, the Board will closely monitor the performance of other key personnel and consult with the General Manager on personnel issues as appropriate.

During April 1, 2006– June 30, 2006, the Transition period, the Board will meet monthly in Las Vegas and will conduct bi-weekly telephone conference calls to maintain frequent contact with transition activities, provide assistance as required, and assess progress against our Transition Plan. The General Manager and his staff will present a “Readiness to Assume Full M&O Contract Performance” to the Board approximately 1 week prior to the end of the Transition Period. Following transition, the Board will meet twice during the first quarter of full performance and quarterly thereafter. These meetings will always be in Las Vegas.

The Board will ensure that NSTec is successful in performing the Statement of Work, that it is following sound business and management practices and that its performance is consistent with NSO’s expectation of excellence. Specifically, the Board will, with the support of the POOC, examine our:

- Safety and security (ISM, ISSM)
- Strategic direction
- Management approach
- Programmatic performance
- Reachback requirements and opportunities
- Fiscal responsibility
- Progress toward WFO goals
- Special topics, as needed

Safety and security are the paramount operational priorities of our company. At each of its meetings, and at other times at its discretion, the Board will assess the safety and security performance of the company to ensure that best practices are being followed and to detect any trends that need correction. Through the POOC, the Board will evaluate safety and security programs against those in their own organizations and elsewhere. If warranted, the Board will direct and oversee improvements and assure that adequate resources are obtained to carry them out. Our parent oversight plan is designed to detect trends before they become problems, enabling corrective measures to be put in place in an effective manner.

Our proposal outlines an exciting set of initiatives for improving operations and bringing new work to NTS. The Board will regularly review the appropriateness of these initiatives to ensure that we are moving in the right strategic direction, one that is consistent with the vision of NSO and NNSA. As part of its regular review process, the Board will meet with NSO leadership.

We believe that modern management practices can significantly reduce the cost of doing business at NTS while improving the quality and quantity of the services and products delivered. The Board will continuously review our management approach to ensure that the best practices of the corporate partners are being properly implemented at the Site and its satellite facilities and that our senior personnel are performing at or above expectations.

With broad experience and engagement across the national security sector, our Board members are uniquely suited to advise NSTec leadership on promising new opportunities and to verify that they are focused on the most important mission areas. This will help identify potential work in

training, conventional weapons testing, homeland-security-related research, and other topics that benefit from the unique features of NTS.

A primary function of the Board is to ensure that we are delivering for our customers and in particular that we are meeting or exceeding all expectations of NSO. It will provide a critical review of our self-assessments and appraisal findings from NSO and NNSA and suggest ways that we can improve. Periodic contact with key users of NTS will provide the Board with its own evaluations of our performance. This information will be used to refine our internal evaluation process, resulting in more accurate and rigorous assessments.

As described in detail in our proposal, the parent organizations of NSTec bring unparalleled reachback opportunities for NTS missions. The Board will periodically review opportunities for NSTec to benefit from programs successfully demonstrated in their home organizations. One of our corporate commitments, the High-Potential Employee Exchange Program, will promote a constant influx of new ideas into our management and operations, ensuring that we benefit from the best practices of our corporate partners. We will also send high-potential employees from NTS to our partner companies for short periods of time to refresh their approach and to expose them to different ways of doing things. The Board will oversee the effectiveness of this and other initiatives intended to bring proven ideas to work at NTS.

The Board has overall fiduciary responsibility for all activities of NSTec. It will periodically review our financial performance to ensure that all government standards are met and that the highest standards are maintained. They will engage an external audit of company finances as they deem necessary and appropriate.

During each meeting, the Board will:

- Review the General Manager's monthly status reports
- Review ESH&Q trends, including a written or oral report from the ESH&Q group, and assess ongoing activities of the ESH&Q Manager
- Review programmatic and operational progress
- Discuss progress of the Lean management program and its successes in reducing costs, tracking management performance, and assuring accountability
- EVMS results
- Review assessment findings of the POOC
- Review independent and NSTec management assessment plans, results, and corrective actions

Additional Board discussions may include:

- Progress on NSTec initiatives
- Need for additional independent reviews and assessments by the POOC
- Specific client issues raised in meetings with NSO or other customers
- Lessons learned at other parent organization sites that are applicable to NTS
- Status reports on project management training and certification, VPP Star status applications, ISO certifications, EVMS certifications, etc.
- At the end of each fiscal year, the Board will meet with NSO to deliver its report.

Parent Organization Oversight Committee (POOC)

The POOC is a group of recognized experts who can provide advice and recommendations to the Board on key issues affecting the performance of NSTec. The function of the POOC is to provide an independent assessment capability to the Board—beyond the self-assessment performed

by NSTec personnel—to increase the level of quality performance in all of our activities. The POOC will identify discrepancies and recommend corrective action to the Board and senior NSTec staff.

The POOC is not a full time body. Rather, individuals will be tasked by the Board on an as-required basis. Approximately 15 individuals will serve on the POOC at various times depending on the area of emphasis. Each will be a recognized authority in his or her field, be familiar with activities at NTS and be committed to a rigorous review process intended to evaluate and improve NSTec performance. This list will include:

- POOC Chair
- Corporate Safety (ES&H/ISM) Officer
- Radiation Safety Subject Matter Expert
- Criticality Safety Subject Matter Expert
- Quality Executive
- ISSM Executive
- Nuclear Operations Subject Matter Expert
- Non-Nuclear Operations Subject Matter Expert
- Emergency Preparedness / Response Subject Matter Expert
- Procurement / Business Operations Executive
- Environmental Management Executive
- Stockpile Stewardship Subject Matter Expert
- DoD Applications Subject Matter Expert
- Homeland Security Subject Matter Expert
- Infrastructure Subject Matter Expert

and will be augmented by other individuals as required.

Most of these individuals will be drawn from our corporate partners, but others with special skills may be obtained from outside sources as required. Gregg Donley, a Northrop Grumman member of our Board, will chair the POOC.

As indicated in the attached Microsoft Project Integrated Master Schedule (IMS) for Parental Oversight, the formal POOC activities will begin in a joint meeting with the Board in July 2006. However, during transition, the POOC will hold frequent informal teleconferences/internet meetings three times to familiarize the members with NTS and with NSTec responsibilities and activities.

POOC activities will be scheduled such that substantive reports will be available at Board meetings. Since the GM attends each Board meeting as a non-voting member, he will hear first hand the reports and receive immediate feedback and direction from the Board. At the next meeting of the Board, the GM will formally report back the results of his corrective actions. (Since there will be close communication between the POOC and the NSTec staff, it is likely that the GM will present some completed corrective actions to the Board following the POOC report as well as his corrective action plan for incomplete tasks.)

The General Manager will designate a senior member of his direct-report staff to provide part time administrative support to ensure close coordination with all aspects of the oversight process. The role of this individual is to enable full, unencumbered access by group members to any data or areas they might need to access within appropriate security and safety constraints. He or she will forward all assessments and corresponding corrective actions plans to the respective POOC

member for review. To maximize the efficiency of assessments, the support individual will ensure that all needed data are available upon POOC arrival and that all required visits to NSTec and government personnel are scheduled.

The POOC will examine issues in detail and prepare reports to the Board in areas all programmatic and operational areas, including:

- ISM
- ISSM
- Nuclear operations
- Non-nuclear operations

Each of these areas is of such importance as to warrant frequent oversight by parties who can provide not only a point assessment but a long-term perspective on the pace of improvement. Additional topics will be assigned by the Board to the POOC and may include:

- T-18 relocation progress
- Workforce development plans and performance
- Administrative streamlining
- Reachback opportunities
- Lean initiatives
- Progress toward achievement of ISO 9001, ISO 14001, and VPP Star status

Generally, the POOC Board will select one special topic to be addressed at each POOC meeting in addition to the regular oversight reviews. The first proposed special topic will be an assessment of our overall employee Leadership Development Program highlighted in our proposal. The last POOC meeting of FY07 will review the effectiveness of this program after the first year of operation.

As appropriate, POOC members will meet with NSO personnel to better understand programmatic priorities and concerns. This will provide an additional path for issues – at all levels of NSO – to be identified and acted upon promptly.

Parent Organization Oversight Committee Specific Activities—July 2006–September 2006

The POOC will meet twice (once in July and once in September, 2006) to gather and assess information on specific activities to be reviewed and assessed during the first full year of the contract. These meetings will take place at NTS and will involve “drill-down” activities in each of the major areas referenced above (i.e., ISM, ISSM, nuclear operations, and non-nuclear operations). These “drill-down” activities, conducted by members of the four standing POOC groups, will consist of formal interviews with all levels of management and the workforce at NTS (down to the shop floor level), will be based on a consistent set of lines of inquiry, and will result in documented reports complete with observations, findings, and recommendations. The first of these group drill-downs, which will be based on information gained during the transition, will occur during the July 5–July 18, 2006, timeframe as shown on the Integrated Master Schedule (IMS). The results of this initial baseline assessment will be presented to the full committee, which is now scheduled for July 27, 2006.

These first group reports of the POOC will act as the baseline to assist in the measurement of continuous improvement. These reports will be forwarded to the Board for consideration and approval.

The Board will consider and discuss the reports received from the POOC groups during its meeting in September 2006. The September Summary Report to the NSO by the Board is a deliverable under this plan.

Parent Oversight Organization Committee Specific Activities October 2006 – September 2007

The POOC will meet quarterly in Las Vegas during FY07 to observe first hand the progress at NTS. During these site visits, members of the POOC may meet individually or as a group with NSO personnel, NSTec management, the workforce, or others as warranted by the agenda for the meeting. The first FY07 meeting is scheduled for November 20, 2006, per the attached IMS.

Prior to each meeting, the various POOC groups will again conduct “drill-down” activities to assess the progress and potential for problems associated with the following major areas.

- ISM
- ISSM
- Nuclear operations
- Non-nuclear operations

The POOC Board may also assign a special topic for assessment prior to the next meeting. Results of these drill downs will be presented at the quarterly meeting for review by the Board. These reviews will produce formal, documented sets of recommendations and observations for Board action.

The POOC will employ an issues tracking system for these meetings to ensure that issues are followed up in a planned manner. (The Site Action Tracking System will also document all deficiencies identified by the POOC so that immediate action can be taken to resolve them.)

After each meeting, the POOC will prepare a summary report of its discussions and will include as appendices each of the individual reports discussed. The summary report will describe topics discussed, findings, recommendations, and actions required by the parent organizations. An Issues Tracking Status Report will be appended to each report. The report will cover all topics that incurred substantial discussion unless they are deemed legally sensitive or otherwise confidential or classified in nature.

It is possible that POOC members will request support from within the parent companies in areas of particular concern. These might include the need for advice on safety program implementation or legal support for environmental or regulatory issues.

During the September visit each year, the POOC Chairman will present an informal summary of the previous year’s performance assessments and request the same from our customers. This information will be fed back into our continuous improvement efforts at NTS. As a deliverable under this plan, the Board Chairman will present a summary assessment of the FY07 Oversight results to NSO senior management.

Other Corporate Oversight Activities

In coordination with the Board and POOC activities, managing partner Northrop Grumman will periodically conduct assessments required of all Northrop Grumman entities. These may be annually or any other frequency dictated in corporate policy to ensure that NSTec operations are consistent with legal and financial standards. These include environmental, health and safety,

security, ethics, and finance reviews. These corporate required activities will be coordinated with and complement the efforts of the POOC. Results of these assessments will be discussed with NSTec leadership and presented to the Board. The NSTec GM will develop Corrective Action Plans, present these plans to the Board, and track all actions to closure. These corporate assessments provide a further degree of independent assessment, one based not on NSTec's own self-assessment but rather on independent data.

Corporate oversight consists of more than reviews—it is intended to engage the senior management of NSTec on a continuous basis to improve their skills and access to corporate resources. As discussed in our proposal, our senior managers will have access to training and development programs from our parent companies. Furthermore, our General Manager and Deputy General Manager will each have one or more mentors within our parent companies, who can serve as a sounding board and who can provide objective advice on difficult issues. Our mentoring approach also helps corporate personnel to become better acquainted with the unique resources of the NTS and hence to further the integration of NSTec as a vital and valued member of our corporate family.

Parent Organization Oversight Summary

This Oversight Plan reflects an integrated approach to maximize the benefits of oversight. Overall responsibility, authority, and accountability for oversight rest with the NSTec Board of Directors. The POOC performs in-depth assessments of critical aspects of NSTec performance on the M&O contract. Results of other corporate-directed assessments will be presented to the Board. This integrated approach ensures that the oversight process “speaks” with one authoritative voice to the General Manager and President of NSTec.

The single purpose of this integrated effort is to maximize our performance on the NTS M&O Contract. In this way we can and will provide the full benefit to NTS that the NSO expects of us.

ID	Task Name	Duration	Start	Finish	Predecessors
1	Transition Contract Award	0 days	Mon 4/2/06	Mon 4/3/06	
2	Start Transition	0 days	Mon 4/2/06	Mon 4/3/06	1
3	POOC Transition Activities Complete	48 days	Thu 4/13/06	Mon 6/19/06	2
4	Specific POOC Members Identified	2 days	Thu 4/13/06	Fri 4/14/06	
5	Parent Organizations Select Committee members	2 days	Thu 4/13/06	Fri 4/14/06	
6	BoD Formally Appoints POOC Chairman and Parent Members	1 day	Thu 4/13/06	Thu 4/13/06	
7	Formalize Subcommittee Charters	1 day	Thu 4/13/06	Thu 4/13/06	
8	Committee Chair Selects Group leads	1 day	Fri 4/14/06	Fri 4/14/06	7
9	GM Appoints NSTec Member to Each Group	1 day	Fri 4/14/06	Fri 4/14/06	6
10	Telecommunication/Net Meeting Familiarization 1 on NTS/NSTec	1 day	Mon 4/17/06	Mon 4/17/06	5
11	Telecommunication/Net Meeting Familiarization 2 on NTS/NSTec	1 day	Mon 5/15/06	Mon 5/15/06	
12	Telecommunication/Net Meeting Familiarization 3 on NTS/NSTec	1 day	Mon 6/19/06	Mon 6/19/06	
13	First Overnight Quarter Complete	62 days	Wed 7/5/06	Thu 9/28/06	12
14	First Visit to NTS by four groups	10 days	Wed 7/5/06	Tue 7/18/06	
15	Gather insight and identify areas for initial assessment	10 days	Wed 7/5/06	Tue 7/18/06	
16	First POOC Meeting at NTS - Joint Session with BOO Meeting	2 days	Thu 7/27/06	Fri 7/28/06	5
17	Meet with NSO Leadership	1 day	Thu 7/27/06	Thu 7/27/06	
18	Update from NSTec GM	1 day	Thu 7/27/06	Thu 7/27/06	
19	Assign Actions to NSTec and Groups	1 day	Thu 7/27/06	Thu 7/27/06	
20	First Special Topic - Assess Employee Leadership Development Program	1 day	Thu 7/27/06	Thu 7/27/06	
21	Site Tour for POOC Members	1 day	Fri 7/28/06	Fri 7/28/06	20
22	Group Visits/Assessments at NTS	10 days	Mon 8/14/06	Fri 8/25/06	
23	Second POOC Meeting at NTS	2 days	Wed 9/27/06	Thu 9/28/06	
24	Group Reports - including Special Assessment	1 day	Wed 9/27/06	Wed 9/27/06	14
25	General Manager Report	1 day	Wed 9/27/06	Wed 9/27/06	
26	Chairman assign assessments and special topic for Nov Meeting	1 day	Wed 9/27/06	Wed 9/27/06	
27	Prepare Quarter's Assessment for NSO Leadership	1 day	Wed 9/27/06	Wed 9/27/06	
28	Meet with NSO leadership	1 day	Thu 9/28/06	Thu 9/28/06	27
29	Present Quarterly Assessment	1 day	Thu 9/28/06	Thu 9/28/06	
30					
31	Start FY2007 Performance	0 days	Sun 10/1/06	Sun 10/1/06	
32	FY2007 Oversight Complete	250 days	Mon 10/16/06	Fri 9/28/07	13
33	POOC Chair Present First Quarter Report to NSTec BoD— Date Approximate	1 day	Mon 10/16/06	Mon 10/16/06	
34	First FY2007 POOC Meeting Held	16 days	Mon 10/30/06	Mon 11/20/06	
35	POOC Groups Conduct ISM/ISSM/Non-nuc/Special Topic Assessments	10 days	Mon 10/30/06	Fri 11/10/06	
36	Groups Prepare Reports to POOC	2 days	Mon 11/13/06	Tue 11/14/06	35
37	POOC Meeting at NTS	1 day	Mon 11/20/06	Mon 11/20/06	
38	Meeting Conducted	1 day	Mon 11/20/06	Mon 11/20/06	
39	Group and Special Topic Reports to Committee	1 day	Mon 11/20/06	Mon 11/20/06	
40	Review Corporate Assessment Topics— Ethics	1 day	Mon 11/20/06	Mon 11/20/06	
41	GM Report to Committee	1 day	Mon 11/20/06	Mon 11/20/06	

Task
 Split
 Progress
 Milestone
 Summary
 Project Summary
 External Tasks
 External Milestone
 Deadline

ID	Task Name	Duration	Start	Finish	Predecessors	Apr 2, '06	Apr 9, '06
						F S M T W T F S	S M T T W
83	POOC Chairman and Members semi-annual visits to NTS customers for performance feed	20 days	Mon 9/3/07	Fri 9/28/07			
84	Highlights 2007 Assessments in pertinent areas	20 days	Mon 9/3/07	Fri 9/28/07			
85	POOC Chairman periodic visits to NNSA/DoE/DNFSB for feedback	20 days	Mon 9/3/07	Fri 9/28/07			
86	Highlights 2007 Assessments and areas of emphasis for 2008	20 days	Mon 9/3/07	Fri 9/28/07			

Project: NTS POOC Master_v2.mpp Date: Wed 2/1/06	<ul style="list-style-type: none"> Task Split Progress 	<ul style="list-style-type: none"> Milestone Summary Project Summary 	<ul style="list-style-type: none"> External Tasks External Milestone Deadline
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Parent Organization's Oversight Plan – RFP Section L-5 [i]

The Parent Organization's Oversight Plan is presented with these NSTec proposal revisions as a separately tabbed appendix insert to Volume I, The Offer.

Recognizing the cost critical sensitivities of the NNSA budget, NSTec seeks to demonstrate our corporate commitment by waiving all cost associated with the priced elements of the Parent Organization Oversight Plan in order to provide best value to the Government.

Parent Organization Oversight Committee

The Parent Organization Oversight Committee (POOC) shall support NSTec in accordance with the Parent Organization's Oversight Plan. The estimates for the POOC are provided for evaluating the completeness, realism and reasonableness of the NSTec resource commitments for affecting the transition schedule and meeting the contract operational readiness. These estimates are for informational purposes as they are not included in the estimated costs as reflected in the Cost Proposal Cover Sheet in the front of this Volume III – Cost Information.

NSTec Board of Directors

The NSTec Board of Directors shall support NSTec in accordance with the Parent Organization's Oversight Plan. The costs associated with the NSTec Board of Directors have been eliminated.

Parent Organization Oversight Support

The Parent Organization Oversight Support provided by Northrop Grumman Home Office Operations shall support NSTec in accordance with the Parent Organization's Oversight Plan. The costs associated with the Parent Organization Oversight Support have been eliminated.

(Note: This paragraph regarding The Parent Organization Oversight Support estimates has been deleted.)

(Note: This paragraph regarding the supporting cost summary table entitled "Parent Organization Oversight Support" has been deleted.)

Parent Organization's Oversight Plan – RFP Section L-5 [i]

NSTec planned activities include three major Parent Organization activities for the contract duration to monitor programmatic and contract performance objectives, and assist NSTec in fulfilling the timely completion of its mission requirements. These Parent Organization activities are:

- Parent Organization Oversight Committee;
- NSTec Board of Directors; and
- Parent Organization Oversight Support.

The Parent Organization Oversight Plan shall be reviewed and submitted to the Contracting Officer in advance to the forthcoming fiscal year. The budget amounts for the Parent Organization activities shall be reviewed for scope and reasonableness. No aspect of these activities is represented as unallowable or unbillable expenses (reference H.17 (b)(2)) or contractor commitments (reference H.28). NSTec shall provide periodic reports regarding the Parent Organization activities and incurred costs to the contract.

These activities shall conform to the Federal Acquisition Regulations and DoE Acquisition Regulation Supplements (DEARS) Cost Principles, and will be consistent with the Cost Accounting Standards Board (CASB) Disclosure Statements (CASB/DS) for all operating elements of NSTec and the Parent Organization, Northrop Grumman Corporation, and affiliates. All incurred costs for NSTec and the Parent Organization shall be subject to full disclosure and US Government audit. Mr. Gregg Donley as the NSTec President and authorized representative shall be the responsible official for administering the Parent Organization Oversight Plan.

Parent Organization Oversight Plan				
	Parent Organization Oversight Committee	NSTec Board of Directors	Parent Organization Oversight Support	Parent Organization Oversight Plan
FY 2006	\$368,532	\$157,428	\$3,750,036	\$4,275,996
FY 2007	\$274,426	\$156,032	\$3,750,036	\$4,180,494
FY 2008	\$285,403	\$162,273	\$3,900,037	\$4,347,713
FY 2009	\$296,819	\$168,764	\$4,056,038	\$4,521,621
FY 2010	\$308,692	\$175,515	\$4,218,280	\$4,702,487
TOTAL	\$1,533,872	\$820,012	\$19,674,427	\$22,028,311

Parent Organization Oversight Committee

As the majority partner in the National Security Technologies, LLC (NSTec), Northrop Grumman Information Technology (NGIT) will lead the parent oversight activities for the partnership team. Each of the four partners, NGIT, Nuclear Fuel Services (NFS), AECOM, and CH2M Hill will have one or more senior executives on the team. Gregg Donley, the President of the Technical Services Sector for Northrop Grumman Information Technology will chair the Parent Organization Oversight Committee (POOC). Mr. Donley reports to Jim O'Neill, President of Northrop Grumman Information Technology (NGIT) and Chairman of the NSTec Board of Directors. Mr. Donley will keep Mr. O'Neill advised of the activities and issues of the POOC on a regular basis and as warranted for critical issues.

In addition to the executive membership on the POOC, the Committee will charge four standing subcommittee's in specific areas of focus. These subcommittees are responsible for evaluating and making recommendations on activities and issues in the following areas:

- ESH&Q
- Safeguards and Security
- Nuclear Operations
- Engineering, Design and Construction

These four subcommittees will remain active throughout the life of the POOC. Additional subcommittees may be chartered to address specific issues and may function over short or long periods of time as required by the POOC. Any additional subcommittees will be DoE sanctioned for approval of the additional costs to the contract.

During transition and the first 24-months of the new contract, the POOC will have two to four hour telephone conferences monthly to discuss operations activities and issues. A formal issues tracking system will be maintained for the POOC meetings. The POOC shall meet once during transition and quarterly thereafter, in Las Vegas (or partners' offices as warranted by the topics of discussion) to observe first hand the progress at NTS. During these site visits, members of the POOC will meet as a group or individually with NSO Management, NST Management, the workforce, labor leadership or others as warranted by the agenda for the meeting. The primary purpose of the POOC is to:

- Monitor activities and issues at the site,
- Explore alternative actions with NST management including best practices at other projects of the parent companies,
- Discuss support that can be offered by the parent organizations, and to
- Make recommendations on future actions.

Discussions will include a number of topics placed on the agenda plus other important issues that require attention, redress, and resolution time. Items that will always be on the agenda include:

- Review of the GM's monthly status report
- Summary presentation of the NST performance in the preceding period by the GM or the DGM
- Summary presentation of ESH&Q trends and ongoing activities by the ESH&Q Manager
- Summary presentation of Safeguards and Security (S&S) trends and ongoing activities by the S&S Manager
- Discussion of the progress of the LEAN Management program and its success in reducing costs, tracking management performance, and assuring accountability where and when appropriate
- Summary presentation from the Nuclear Operations subcommittee (oral or written)
- Summary presentation of the Engineering, Design and Construction subcommittee (oral or written)
- Review of the "POOC-specific" issues tracking report

Examples of topics that could be added if recent actions warrant POOC discussions include:

- Progress on NST initiatives originally proposed by the NST Team

- The need for independent reviews and assessments of the NTS Team's activities by teams hand picked and chartered by the POOC, e.g. review of a struggling project, review of a potential PAAA issue, review of specific adverse trends, etc.
- EVMS specific results or general value to the client
- Specific client issues raised in one-on-ones with the client
- Negative trend reports
- Lessons learned at other partner sites
- Recent success stories at other partner sites
- Broad or focused site tours
- Employee meetings
- Collective bargaining issues
- Status of Work for Others initiatives by the parent organizations
- Status reports on Project Management training and certification, VPP Start Status applications, ISO certifications, EVMS Certifications, etc.

Quarterly meetings of the POOC will last one to two days depending on the agenda for the meeting. The need for site tours will almost certainly extend the meetings to more than one day although it is possible the POOC could charter a subgroup to arrive a day early for specific site visits and then report out to the full committee. For costing purposes, it is assumed that the meetings will occupy sixteen hours of each member's time which will include time preparing for the meeting, attending the meeting and completing follow-up actions after the meeting.

It is assumed that each partner will have a senior member and a proxy member, either one or both may attend the meetings. However during the first 24 months it is assumed both will attend the meetings for educational and continuity reasons. Furthermore, it is likely during the first two years that the POOC members will request support from within the parent companies in areas that have become especially challenging. These might include the need for an Industrial Relations or a Human Resources specialist. It might also include legal support for regulatory or environmental issues. Again for costing purposes, it is assumed that one support person is required for each meeting and that two support people may be involved in telephone calls since they do not require travel.

The four standing committees will have four to six members each so for costing purposes we have assumed five members for each of the four committees. One of the members will be the senior executive (e.g. Director) on the NSTec Team for each function. However, funding for these four individuals is provided as part of their day-to-day duties and not included as a separate item in the cost of the POOC. Therefore, all costing calculations will assume four members per committee for each of four committees, or sixteen subcommittee members. Each committee will not necessarily have representatives from each partner in the LLC but it is assumed that across the committees there will be equal participation, on average, from each company (four per company are used for costing purposes). It is further assumed these subcommittees will meet or conference by telephone once per month for four hours and complete assigned tasks requiring an additional 24 hours per month. Finally, it is assumed they will submit written reports or make oral presentations to the Parent Organization Oversight Committee monthly. Formation of these subcommittees will occur and they will begin functioning early in transition but they are not assumed to perform any of the "due diligence" activities during transition since these costs are included elsewhere in this proposal.

The POOC will produce a summary report of the results of each meeting or phone call. The report will summarize topics discussed, findings, recommendations and actions required by the parent organizations. An "Issues Tracking Status Report" will be appended to each report. The report will cover all topics that incurred substantial discussion unless deemed legally sensitive or otherwise confidential in nature. Copies of the report will be sent to the senior-most NSO Managers office and to the Contracting Officer for his records but may not be distributed beyond that point unless first approved by the Chairman of the POOC. Likewise, distribution of the report within NSTec will be limited to the GM, the DGM, and the senior most member of each partner on the NSTec Team (as identified by each partner).

Based on the approach and assumptions outlined in the Parent Organization Oversight Plan, the cost estimate for implementing this plan including the formation and involvement of the Parent Organization Oversight Committee is summarized below.

NSTec Board of Directors

The NSTec Board of Directors are comprised of corporate representatives from each of the NSTec partners: NGIT, CH2MHILL, AECOM, and NFS. The NSTec Board of Directors is to conduct two-day meetings quarterly for assessment of corporate and contract requirements, objectives, and issues.

Parent Organization Oversight Support

The Parent Organization Oversight Support represents corporate resources to assist NSTec in the various management areas to provide the deep and varied experience of Northrop Grumman Corporation to National Security Technologies LLC and the National Nuclear Security Administration.

The supporting cost summary table entitled "Parent Organization Oversight Support" is a representative analysis of the parent resources by functional expertise. The out-year estimates have been escalated four percent from the preceding period estimates for establishing a target estimate of the Parent Organization Oversight Support costs for inclusion to the proposed cost estimates.