

**SECTION I  
CONTRACT CLAUSES**

**Application of FAR and DEAR Clauses is incorporated by reference as explained in FAR 52.252-2. Subsequent changes to FAR and DEAR are not applicable to this contract unless incorporated by Contract Modification. Additional information required by certain clauses is provided below.**

| <u>Clause No.</u> | <u>FAR/DEAR Reference</u>      | <u>Title</u>  | <u>Fill-In Information (See FAR 52.104(d))</u> |
|-------------------|--------------------------------|---|--|
| I.1               | FAR 52.202-1<br>DEAR 952.202-1 | DEFINITIONS (JAN 2012) (AS MODIFIED BY DEAR DEFINITIONS (APR 2002)  | None   |
| I.2               | FAR 52.203-3                   | GRATUITIES (APR 1984)   | None   |
| I.3               | FAR 52.203-5                   | COVENANT AGAINST CONTINGENT FEES (APR 1984)   | None   |
| I.4               | FAR 52.203-6                   | RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEPT 2006)   | None   |
| I.5               | FAR 52.203-7                   | ANTI-KICKBACK PROCEDURES (OCT 2010)   | None   |
| I.6               | FAR 52.203-8                   | CANCELLATION, RECISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)  | None   |
| I.7               | FAR 52.203-10                  | PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)   | None   |
| I.8               | FAR 52.203-12                  | LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)   | None   |
| I.9               | FAR 52.204-1                   | APPROVAL OF CONTRACT (DEC 1989)   | DOE Procurement Executive or Designee          |
| I.10              | FAR 52.204-4                   | PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (MAY 2011)   | None   |
| I.11              | FAR 52.209-6                   | PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (AUG 2013) | None   |
| I.12              | FAR 52.211-5                   | MATERIAL REQUIREMENTS (AUG 2000)  | None   |
| I.13              | FAR 52.215-8                   | ORDER OF PRECEDENCE – UNIFORM CONTRACT FORMAT (OCT 1997)  | None   |
| I.14              | FAR 52.219-8                   | UTILIZATION OF SMALL BUSINESS CONCERNS (JULY 2013)  | None   |
| I.15              | FAR 52.219-9                   | SMALL BUSINESS SUBCONTRACTING PLAN (JULY 2013)  | None   |
| I.16              | FAR 52.219-16                  | LIQUIDATED DAMAGES- SUBCONTRACTING PLAN (JAN 1999)  | None   |

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| I.17 | FAR 52.219-25 | SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM – DISADVANTAGED STATUS AND REPORTING (JULY 2013)                   | None  |
| I.18 | FAR 52.222-1  | NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)   | None  |
| I.19 | FAR 52.222-2  | PAYMENT OF OVERTIME PREMIUM (JULY 1990)   | OT Premium established annually by modification |
| I.20 | FAR 52.222-3  | CONVICT LABOR (JUNE 2003)   | None  |
| I.21 | FAR 52.222-4  | CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION (JULY 2005)  | None  |
| I.22 | FAR 52.222-6  | DAVIS-BACON ACT (JULY 2005)   | None  |
| I.23 | FAR 52.222-7  | WITHHOLDING OF FUNDS (FEB 1988)   | None  |
| I.24 | FAR 52.222-8  | PAYROLLS AND BASIC RECORDS (JUNE 2010)  | None  |
| I.25 | FAR 52.222-9  | APPRENTICES AND TRAINEES (JULY 2005)  | None  |
| I.26 | FAR 52.222-10 | COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)  | None  |
| I.27 | FAR 52.222-11 | SUBCONTRACTS (LABOR STANDARDS) (JULY 2005)  | None  |
| I.28 | FAR 52.222-12 | CONTRACT TERMINATION-DEBARMENT (FEB 1988)   | None  |
| I.29 | FAR 52.222-13 | COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)  | None  |
| I.30 | FAR 52.222-14 | DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)  | None  |
| I.31 | FAR 52.222-15 | CERTIFICATION OF ELIGIBILITY (FEB 1988)   | None  |
| I.32 | FAR 52.222-16 | APPROVAL OF WAGE RATES (FEB 1988)   | None  |
| I.33 | FAR 52.222-20 | WALSH-HEALEY PUBLIC CONTRACTS ACT (OCT 2010)  | None  |
| I.34 | FAR 52.222-21 | PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)   | None  |
| I.35 | FAR 52.222-26 | EQUAL OPPORTUNITY (MAR 2007)  | None  |
| I.36 | FAR 52.222-35 | EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2010) | None  |
| I.37 | FAR 52.222-36 | AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (OCT 2010)   | None  |

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| I.38 | FAR 52.222-37   | EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2010) | None  |
| I.39 | FAR 52.222-38   | COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (SEPT 2010)   | None  |
| I.40 | FAR 52.222-41   | SERVICE CONTRACT ACT OF 1965, AS AMENDED (NOV 2007)   | None  |
| I.41 | FAR 52.225-9    | BUY AMERICAN ACT – CONSTRUCTION MATERIALS (SEPT 2010)   | Paragraph (b) (2): None                       |
| I.42 | FAR 52.223-3    | HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) ALTERNATE I (JULY 1995)                         | As Required                                   |
| I.43 | FAR 52.223-5    | POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (MAY 2011)   | None  |
| I.44 | DEAR 970.5223-4 | WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010)  | None  |
| I.45 | FAR 52.223-10   | WASTE REDUCTION PROGRAM (MAY 2011)  | None  |
| I.46 | FAR 52.223-11   | OZONE-DEPLETING SUBSTANCES (MAY 2001)   | None  |
| I.47 | FAR 52.223-12   | REFRIGERATOR EQUIPMENT AND AIR CONDITIONERS (MAY 1995)  | None  |
| I.48 | RESERVED        |   |   |
| I.49 | FAR 52.224-1    | PRIVACY ACT NOTIFICATION (APR 1984)   | None  |
| I.50 | FAR 52.224-2    | PRIVACY ACT (APR 1984)  | None  |
| I.51 | FAR 52.225-1    | BUY AMERICAN ACT - SUPPLIES (FEB 2009)  | None  |
| I.52 | FAR 52.225-13   | RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUNE 2008)   | None  |
| I.53 | FAR 52.226-1    | UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUNE 2000)                                 | None  |
| I.54 | FAR 52.227-23   | RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUNE 1987)   | (All of Volumes II and III), (August 9, 2002) |
| I.55 | FAR 52.230-2    | COST ACCOUNTING STANDARDS (MAY 2012)  | None  |
| I.56 | FAR 52.230-6    | ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUNE 2010)   | None  |
| I.57 | FAR 52.232-17   | INTEREST (OCT 2010)   | None  |
| I.58 | FAR 52.232-23   | ASSIGNMENT OF CLAIMS (JAN 1986)   | None  |
| I.59 | FAR 52.233-1    | DISPUTES (JUL 2002) ALTERNATE I (DEC 1991)  | None  |
| I.60 | FAR 52.233-3    | PROTEST AFTER AWARD (AUG 1996) ALTERNATE I (JUNE 1985)  | None  |
| I.61 | FAR 52.237-3    | CONTINUITY OF SERVICES (JAN 1991)   | None  |

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| I.62 | FAR 52.242-1    | NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)                                | None   |
| I.63 | FAR 52.242-13   | BANKRUPTCY (JULY 1995)   | None   |
| I.64 | FAR 52.244-5    | COMPETITION IN SUBCONTRACTING (DEC 1996)                                     | None   |
| I.65 | FAR 52.244-6    | SUBCONTRACTS FOR COMMERCIAL ITEMS (JULY 2013)                                | None   |
| I.66 | FAR 52.247-63   | PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUNE 2003)                            | None   |
| I.67 | FAR 52.247-64   | PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006)       | None   |
| I.68 | FAR 52.249-6    | TERMINATION (COST REIMBURSEMENT) (MAY 2004) (MODIFIED)                       | <a href="#">Clause Attached (full text)</a>  |
| I.69 | FAR 52.249-14   | EXCUSABLE DELAYS (APR 1984)  | None   |
| I.70 | FAR 52.251-1    | GOVERNMENT SUPPLY SOURCES (APR 2012)   | None   |
| I.71 | FAR 52.251-2    | INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991) | Correct last citation to read “41 CFR 101-38.”   |
| I.72 | FAR 52.252-2    | CLAUSES INCORPORATED BY REFERENCE (FEB 1998)                                 | <a href="#">Clause Attached (full text)</a>  |
| I.73 | FAR 52.252-6    | AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)                                  | <a href="#">Clause Attached (Full Text)</a>  |
| I.74 | FAR 52.253-1    | COMPUTER GENERATED FORMS (JAN 1991)  | None   |
| I.75 | DEAR 952.203-70 | WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)                 | None   |
| I.76 | DEAR 952.204-2  | SECURITY (OCT 2013) (DEVIATION)  | None   |
| I.77 | DEAR 952.204-70 | CLASSIFICATION/DECLASSIFICATON (SEPT 1997)                                   | None   |
| I.78 | DEAR 952.247-70 | FOREIGN TRAVEL (JUNE 2010)   | None   |
| I.79 | DEAR 952.204-75 | PUBLIC AFFAIRS (DEC 2000)  | None   |
| I.80 | DEAR 952.209-72 | ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009) ALERNATE I                   | Paragraph (b)(1)(i) three (3) years. The words “advisory and assistance services” used throughout this clause shall be changed to “management and professional support services” |
| I.81 | DEAR 952.215-70 | KEY PERSONNEL (DEC 2000)   | Section J – Appendix G   |
| I.82 | DEAR 952.217-70 | ACQUISITION OF REAL PROPERTY (MAR 2011)                                      | None   |
| I.83 | RESERVED        |  |  |
| I.84 | DEAR 952.226-74 | DISPLACED EMPLOYEE HIRING PREFERENCE (JUNE 1997)                             | None   |
| I.85 | DEAR 952.251-70 | CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (AUG 2009)                              | None   |
| I.86 | DEAR 970.5203-1 | MANAGEMENT CONTROLS (JUNE 2007)  | None   |

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| I.87  | DEAR 970.5203-2  | PERFORMANCE IMPROVEMENT AND COLLABORATION (MAY 2006)  | None  |
| I.88  | DEAR 970.5203-3  | CONTRACTOR'S ORGANIZATION (DEC 2000) (DEVIATION) [USE DEAR 970.5204-12 CONTRACTOR'S ORGANIZATION (APR 1984)]                    | <a href="#">Clause Attached (Full Text)</a>   |
| I.89  | DEAR 970.5204-1  | COUNTERINTELLIGENCE (DEC 2010)  | None  |
| I.90  | DEAR 970.5204-2  | LAWS, REGULATIONS, AND DOE/SPRPMO DIRECTIVES (DEC 2000)   | None  |
| I.91  | DEAR 970.5204-3  | ACCESS TO AND OWNERSHIP OF RECORDS (JULY 2005)  | Contractor-owned records: (b): Paragraphs (1) through (4) (Paragraph (5) is not applicable to this solicitation/contract) |
| I.92  | DEAR 970.5208-1  | PRINTING (DEC 2000)   | None  |
| I.93  | DEAR 970.5215-1  | TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT (DEC 2000), ALTERNATE I (DEC 2000) AND ALTERNATE III (DEC 2000) | Alternate III, paragraph (f): 10 calendar days  |
| I.94  | RESERVED         |   |   |
| I.95  | DEAR 970.5215-3  | CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES – FACILITY MANAGEMENT CONTRACTS (AUG 2009), ALTERNATE II (AUG 2009)    | <a href="#">Clause Attached (Full Text)</a>   |
| I.96  | RESERVED         |   |   |
| I.97  | DEAR 970.5222-1  | COLLECTIVE BARGAINING AGREEMENTS-MANAGEMENT AND OPERATING CONTRACTS (DEC 2000)  | None  |
| I.98  | DEAR 970.5222-2  | OVERTIME MANAGEMENT (DEC 2000)  | None  |
| I.99  | DEAR 970.5223-1  | INTEGRATION OF ENVIRONMENT, SAFETY AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)                                       | None  |
| I.100 | RESERVED         |   |   |
| I.101 | DEAR 970.5226-1  | DIVERSITY PLAN (DEC 2000)   | None  |
| I.102 | DEAR 970.5226-3  | COMMUNITY COMMITMENT (DEC 2000)   | None  |
| I.103 | DEAR 970.5227-1  | RIGHTS IN DATA—FACILITIES (DEC 2000)  | None  |
| I.104 | DEAR 970.5227-4  | AUTHORIZATION AND CONSENT (AUG 2002)  | None  |
| I.105 | DEAR 970.5227-5  | NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)  | None  |
| I.106 | DEAR 970.5227-6  | PATENT INDEMNITY SUBCONTRACTORS (DEC 2000)  | None  |
| I.107 | DEAR 970.5227-8  | REFUND OF ROYALTIES (AUG 2002)  | None  |
| I.108 | DEAR 970.5227-11 | PATENT RIGHTS - MANAGEMENT AND OPERATING CONTRACTS, FOR PROFIT CONTRACTOR, NON-TECHNOLOGY TRANSFER (DEC 2000)                   | None  |

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| I.109 | DEAR 970.5228-1 | INSURANCE-LITIGATION AND CLAIMS (JULY 2013)   | None  |
| I.110 | DEAR 970.5229-1 | STATE AND LOCAL TAXES (DEC 2000)  | None  |
| I.111 | DEAR 970.5231-4 | PREEXISTING CONDITIONS (DEC 2000)<br>ALTERNATE I (DEC 2000)                           | Insert in paragraph (a) "April 1, 2003" "Strategic Petroleum Reserve" "DE-AC96-93PO18000" |
| I.112 | DEAR 970.5232-1 | REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS (DEC 2000)          | None  |
| I.113 | DEAR 970.5232-2 | PAYMENTS AND ADVANCES (DEC 2000)<br>ALTERNATE II (DEC 2000), ALTERNATE III (DEC 2000) | Insert in Paragraph (c) "Appendix C"  |
| I.114 | DEAR 970.5232-3 | ACCOUNTS, RECORDS, AND INSPECTION (DEC 2010)  | None  |
| I.115 | DEAR 970.5232-4 | OBLIGATION OF FUNDS (DEC 2000)  | Insert in Paragraph (a) "Set forth in Section B." Insert in Paragraph (c) "90", "90".     |
| I.116 | DEAR 970.5232-5 | LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (DEC 2000)                        | None  |
| I.117 | DEAR 970.5232-6 | WORK FOR OTHERS FUNDING AUTHORIZATIONS (DEC 2000)                                     | None  |
| I.118 | DEAR 970.5232-7 | FINANCIAL MANAGEMENT SYSTEM (DEC 2000)  | None  |
| I.119 | DEAR 970.5232-8 | INTEGRATED ACCOUNTING (DEC 2000)  | None  |
| I.120 | DEAR 970.5236-1 | GOVERNMENT FACILITY SUBCONTRACT APPROVAL (DEC 2000)                                   | None  |
| I.121 | RESERVED        |   |   |
| I.122 | DEAR 970.5242-1 | PENALTIES FOR UNALLOWABLE COSTS (AUG 2009)  | None  |
| I.123 | DEAR 970.5243-1 | CHANGES (DEC 2000)  | None  |
| I.124 | DEAR 970.5244-1 | CONTRACTOR PURCHASING SYSTEM (JAN 2013) (DEVIATION)                                   | <a href="#">Clause Attached (Full Text)</a>   |
| I.125 | DEAR 970.5245-1 | PROPERTY (JAN 2013)   | None  |
| I.126 | RESERVED        |   |   |
| I.127 | RESERVED        |   |   |
| I.128 | FAR 52.233-4    | APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)                                | None  |
| I.129 | FAR 52.204-9    | PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)                     | None  |
| I.130 | FAR 52.222-50   | COMBATING TRAFFICKING IN PERSONS (FEB 2009)   | None  |
| I.131 | FAR 52.223-15   | ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS (DEC 2007)                             | None  |
| I.132 | FAR 52.239-1    | PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)   | None  |

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| I.133 | RESERVED        |   |   |
| I.134 | FAR 52.223-2    | AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (SEPT 2013)                 | None  |
| I.135 | FAR 52.203-13   | CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (APR 2010)   | None  |
| I.136 | FAR 52.203-14   | DISPLAY OF HOTLINE POSTERS (DEC 2007)   | Insert in Paragraph (b) (3) Posters – <i>DOE Hotline Poster</i> . Obtain from <a href="http://ig.energy.gov/hotline.htm">http://ig.energy.gov/hotline.htm</a> |
| I.137 | FAR 52.223-16   | IEEE STANDARD FOR THE ENVIRONMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS (DEC 2007)                           | None  |
| I.138 | FAR 52.222-54   | EMPLOYMENT ELIGIBILITY VERIFICATION (AUG 2013)  | None  |
| I.139 | FAR 52.223-17   | AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (MAY 2008)                  | None  |
| I.140 | DEAR 970.5223-6 | EXECUTIVE ORDER 13423, STRENGTHENING FEDERAL, ENVIRONMENTAL, ENERGY, AND TRANSPORTATION MANAGEMENT (OCT 2010)     | None  |
| I.141 | DEAR 970.5223-7 | SUSTAINABLE ACQUISITION PROGRAM (OCT 2010)  | None  |
| I.142 | FAR 52.223-18   | ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)                                    | None  |
| I.143 | FAR 52.217-8    | OPTION TO EXTEND SERVICES (NOV 1999)  | Insert in last sentence “30 days”   |
| I.144 | FAR 52.203-17   | CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENTS TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEPT 2013) | None  |

Clause I.68 FAR 52.249-6 - TERMINATION (COST REIMBURSEMENT) (MAY 2004) (MODIFIED)

- (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 paragraph (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 paragraph (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 paragraph (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 Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
  - (j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor-
    - (1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or
    - (2) The amount finally determined on an appeal.
  - (k) In arriving at the amount due the Contractor under this clause, there shall be deducted-
    - (1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;
    - (2) Any claim which the Government has against the Contractor under this contract; and
    - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.
  - (l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.
  - (m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
    - (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
  - (n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

Clause I.72 FAR 52.252-2 - CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

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

<http://www.arnet.gov/far/> (Federal Acquisition Regulations)

[Acquisition Regulation](#) (Department of Energy Acquisition Regulations)

Clause I.73 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 Regulation (48 CFR Part 9) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

Clause I.88 DEAR 970.5203-3- CONTRACTOR'S ORGANIZATION (DEC 2000) (DEVIATION)  
[Use DEAR 970.5204-12 CONTRACTOR'S ORGANIZATION (APR 1984)]

- (a) Organization chart. As promptly as possible after the execution of this Contract, the Contractor shall furnish to the Contracting Officer a chart showing the names, duties, and organization of key personnel to be employed in connection with the work, and shall furnish from time to time supplementary information reflecting changes therein.
- (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 at all times. This also applies to off-site work.
- (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 his 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 contrary to the public interest, the Government reserves the right to require the Contractor to remove the employee.

Clause I.95 DEAR 970.5215-3 - CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES — FACILITY MANAGEMENT CONTRACTS (AUG 2009) ALTERNATE II (AUG 2009)

- (a) General. (1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon –
  - (i) The Contractor's or Contractor employees' compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H), which includes worker safety and health (WS&H), including performance under an approved Integrated Safety Management System (ISMS); and

(ii) The Contractor's or Contractor employees' compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information.

(2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including the DOE approved Contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.

(3) The performance requirements of this contract relating to the safeguarding of Restricted Data and other classified information are set forth in the clauses of this contract entitled, "Security" and "Laws, Regulations, and DOE Directives," as well as in other terms and conditions.

(4) If the Contractor does not meet the performance requirements of this contract relating to ES&H or to the safeguarding of Restricted Data and other classified information during any performance evaluation period established under the contract pursuant to the clause of this contract entitled, "Total Available Fee: Base Fee Amount and Performance Fee Amount," otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by the Contracting Officer.

(b) Reduction Amount. (1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraphs (c) and (d) of this clause.

(2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26% 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 225.1A).

(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 225.1A).

(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 231.1-2 requirements; or internal oversight of DOE Order 440.1A requirements.

(ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant programmatic breakdown.

(iii) Non-compliances that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.

(iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(d) **Safeguarding Restricted Data and Other Classified Information.** Performance failures occur if the Contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or share of cost savings will be determined are as follows:

(1) **First Degree:** Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.
- (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
- (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
- (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(2) **Second Degree:** Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:

- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.
- (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.
- (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for

information covered by paragraph (d)(1)(iii) of this clause).

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.

(3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

(e) Minimum requirements for specified level of performance.

(1) At a minimum the Contractor must perform the following:

(i) The requirements with specific incentives which do not require the achievement of cost efficiencies in order to be performed at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimum level of performance has been established in the specific incentive;

(ii) All of the performance requirements directly related to requirements specifically incentivized which do not require the achievement of cost efficiencies in order to be performed at a level of performance such that the overall performance of these related requirements is at an acceptable level; and

(iii) All other requirements at a level of performance such that the total performance of the contract is not jeopardized.

(2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Government. To the extent that the Contractor fails to achieve the minimum performance levels specified in the Statement of Work, Work Authorization Directive, or similar document, during the performance evaluation period,

the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

(f) Minimum requirements for cost performance.

- (1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.
- (2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.
- (3) The Contractor's performance within the stipulated cost performance levels for the performance evaluation period shall be determined by the Government. To the extent the Contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

Clause I.124 DEAR 970.5244-1 CONTRACTOR PURCHASING SYSTEM (JAN 2013) (DEVIATION)

(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 \$100,000. 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 \$25,000, but not greater than \$100,000, the Contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

(4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.

(g) *Buy American.* The Contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225-1 and 48 CFR 52.225-9. The Contractor shall forward determinations of non-availability of individual items to the DOE Contracting Officer for approval. Items in excess of \$100,000 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 \$100,000 or less.

(h) *Construction and Architect-Engineer Subcontracts.*

(1) *Independent Estimates.* A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.

(2) *Specifications.* Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."

(3) *Prevention of Conflict of Interest.*

(i) The Contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.

(ii) The Contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.

(iii) The Contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the 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) Davis-Bacon clauses prescribed in 48 CFR 22.407.
- (2) Foreign Travel clause prescribed in 48 CFR 952.247-70.
- (3) Counterintelligence clause prescribed in 48 CFR 970.0404-4(a).
- (4) Service Contract Act clauses prescribed in 48 CFR 22.1006.
- (5) State and local taxes clause prescribed in 48 CFR 970.2904-1.
- (6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).
- (7) Nondisplacement of Qualified Workers clause prescribed in 48 CFR 22.1207.

(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.