



**Department of Energy**  
Office of Science

**Fermi National Accelerator Laboratory**

**Cover Letter**

**Solicitation No. 89243123RSC000083**

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January 3, 2024

TO: Prospective Offerors

SUBJECT: REQUEST FOR PROPOSALS (RFP) NO. 89243123RSC000083 FOR THE SELECTION OF A MANAGEMENT AND OPERATING CONTRACTOR FOR THE FERMI NATIONAL ACCELERATOR LABORATORY (FNAL)

This letter is a summary of the salient elements of the acquisition, but is not an integral part of the attached RFP. Should there be any conflict between this letter and the RFP, the information in the RFP shall prevail.

The Department of Energy (DOE) is releasing the RFP for award of a management and operating contract for FNAL. DOE is seeking proposals from Offerors interested in competing for this contract.

Located in Batavia, IL, FNAL was established in 1967 and is funded primarily by DOE's Office of Science (SC). FNAL is a Federally Funded Research and Development Center that leads the nation in the construction and operation of world-leading accelerator and detector facilities and in developing the underlying technology for particle physics research. The primary mission of FNAL is delivering breakthrough science and technology in the area of high energy particle physics. To carry this out, FNAL has a staff of approximately 2,100 employees, consisting of both direct hires and augmented personnel, and a current annual budget of approximately \$614 million. FNAL is located on a federally owned 6,800-acre site which houses approximately 370 buildings.

Specific details of the contract performance requirements are described in the RFP. The RFP is posted on the FNAL competition website at <https://science.osti.gov/Acquisition-Management/M-and-O-Competitions>.

All questions must be submitted to the official FNAL competition email address at [FNALcompetition@science.doe.gov](mailto:FNALcompetition@science.doe.gov). Submission of questions by other means is not authorized. All questions regarding the RFP must be submitted no later than ten (10) calendar days prior to the date the proposals are due. Questions submitted after this date may not be answered and may not be the basis for amending this solicitation. Questions and answers, if appropriate, will be posted on the FNAL competition website.

In order to further the Government's policy of maximizing electronic commerce and making the acquisition process optimally cost effective, electronic media will be the primary method of communication from the Government regarding this solicitation. The solicitation, solicitation amendments, responses to questions, and other official communications from the Government will be posted on the FNAL competition website at <https://science.osti.gov/Acquisition-Management/M-and-O-Competitions>. This website will be the primary distribution medium used to disseminate information relating to this solicitation. Offerors are responsible for checking the FNAL competition website frequently for information, notices, and updates regarding this solicitation.

A Source Evaluation Board (SEB) has been established to evaluate proposals submitted in response to the RFP. The SEB will conduct its activities in accordance with DOE's regulations and policies. Proposals will be evaluated in accordance with the specific methodology and evaluation criteria set forth in Section M of the RFP. General instructions are contained in Section L of the RFP.

Additionally, Offerors are required to be registered in the System for Award Management (SAM) when submitting a proposal and at the time of award. Processing time should be taken into consideration when registering. See <https://www.sam.gov> for registration information.

### **Significant items of interest concerning this solicitation**

Offerors are encouraged to pay particular attention to the following aspects of the RFP:

Contract Type. DOE will award one (1) performance-based, cost-reimbursement, award fee and award term incentive management and operating contract to the responsible Offeror whose proposal represents the best value to the Government. The Government intends to evaluate proposals and award a contract without discussions with Offerors (except clarifications as described in FAR 15.306(a)). Therefore, the Offeror's initial proposal should contain the Offeror's best terms from a technical and cost and price standpoint. The Government reserves the right to conduct discussions if it later determines them to be necessary. (Refer to Section L Provisions entitled "FAR 52.216-1 – Type of Contract" and "Instructions for the Submission of Proposals and Uniform Contract".)

Award Term Incentive. The base term of the contract is five years. The Government may extend the contract up to a total of 15 years beyond the five-year base term for exemplary performance. (Refer to Section F Clause entitled "Award Term Incentive".)

Separate Corporate Entity. The work performed under this contract shall be conducted by a separate corporate entity from its parent organization(s). The separate corporate entity must be set up solely to perform work at FNAL and shall be totally responsible for all contract activities. In addition, all entities comprising the separate corporate entity shall each provide a performance guarantee for the performance of the contract which shall be incorporated into the contract. (Refer to Section H Clause entitled "Separate

Entity and Performance Guarantee” and Section L, Appendix 3 entitled “Performance Guarantee Agreement”).)

Employee Retention. Subject to the availability of funds, the selected Offeror will be required to retain the current workforce, with the exception of discretionary incumbent management employees. (Refer to Section H Clause entitled “Workforce Transition” and Section L Provision entitled “FNAL Personnel Information”).)

Compensation and Benefits. The selected Offeror shall provide retained incumbent employees equivalent pay for at least the first year of the contract and equivalent benefits to those provided by the incumbent contractor. The contractor shall become the plan sponsor of pension and other post-retirement benefit plans (PRBs), as applicable, for those individuals who retired from employment at FNAL with the predecessor contractor prior to the last day of contract transition. (Refer to Section H Clause entitled “Workforce Transition” and Section L Provision entitled “FNAL Personnel Information”).)

Bargaining Agreements. The selected Offeror will be expected to provide employment terms and conditions consistent with those provided under the current agreements until bargaining unit employees electing to organize have transitioned to new collective bargaining agreements. (Refer to Section L Provision entitled “FNAL Personnel Information”).)

Small Business Plan. Offerors are required to submit a Small Business Subcontracting Plan with their offer that is consistent with DOE’s goals. Copies of the current contractor’s recent Small Business Subcontracting Plans and small business progress report data are available on the FNAL competition website. (Refer to Section L Provision entitled “Submission of the Small Business Plan” and Section J, Appendix H entitled “Small Business Subcontracting Plan”).)

Performance Fee. DOE anticipates awarding performance fee under this contract. The maximum earnable performance fee Offerors may propose for the first five (5) years is \$5.564 Million for each full fiscal year. (Refer to Section L Provision entitled “Performance Fee”).)

Transition Plan. Offerors are required to provide a transition plan covering a phase-in period of a maximum of three (3) months prior to assuming responsibility for the management and operation of FNAL. This plan should address specific steps necessary to assume full responsibility for management and operation of FNAL as of 12:01 A.M., January 1, 2025. (Refer to Section H Clause entitled “Activities During Contract Transition” and Section L Provision entitled “Transition Plan”).)

Pre-Proposal Conference. A virtual pre-proposal conference has been scheduled for January 11, 2024. Prospective Offerors are encouraged to attend. Registration is required. Registration information is available on the FNAL competition website. (Refer to Section L Provision entitled Pre-Proposal Conference and the FNAL competition website.)

Site Tour. A site tour has been scheduled for January 18, 2024. Prospective Offerors are encouraged to attend. Registration is required. Registration information is available on the FNAL competition website. (Refer to Section L Provisions entitled “Site Tours” and “FAR 52-237-1 – Site Visit”, and the FNAL competition website.)

Proposal Due Date. Proposals, and any modifications, are due on March 4, 2024, by 5:00 p.m., Central Time. Proposals must be submitted electronically through FedConnect at <https://www.fedconnect.net>. Offerors are strongly encouraged to start the proposal submission process well in advance of the proposal due date/time. Instructions for submission of proposals are located in Section L. Late proposals, modifications, and withdrawals will be treated in accordance with Section L Provision entitled “FAR 52.215-1 – Instructions to Offerors – Competitive Acquisition”. (Refer to Section L Provisions entitled “Date, Time, and Place Offers/Proposals are Due” and “Instructions for the Submission of Proposals and Uniform Contract”.)

Oral Presentations. All Offerors are required to make oral presentations to the SEB approximately four weeks after receipt of proposals. The SEB will schedule the oral presentations via lottery and will notify each Offeror, within ten (10) business days after the date for receipt of proposals, of the date and time of its oral presentation. The oral presentation will be held in the vicinity of the Fermi National Accelerator Laboratory. (Refer to Section L Provisions entitled “Oral Presentations” and “Offeror Engagement”, and Section M Provision entitled “Capabilities and Approach Evaluation Factors”.)

Evaluation Factors. The criteria DOE will use in evaluating and selecting a contractor are Science Vision and Implementation Plan, Laboratory Operations, Offeror Engagement, Past Performance, and Transition Plan. The Government will evaluate cost proposals for price reasonableness and cost realism. The cost evaluation will include consideration of the Offeror’s proposed transition costs, proposed Key Personnel’s total compensation costs for the first two (2) years, and the proposed performance fee for the first five (5) years. A contract will be awarded to the responsible Offeror whose proposal is acceptable and is determined to be the best value to the Government. (Refer to Section M entitled “Evaluation Factors for Award” and Section L Provisions L.2 through L.7.)

Intent to Submit an Offer. While not required, Offerors intending to submit an offer are requested to send an e-mail to [FNALcompetition@science.doe.gov](mailto:FNALcompetition@science.doe.gov) no later than the close of business 15 business days after the RFP is released. (Refer to Section L Provision entitled “Intent to Submit an Offer”.)

Enclosure:

Request for Proposals (RFP) No. 89243123RSC000083

<b>SOLICITATION, OFFER AND AWARD</b>		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	▶	RATING	PAGE OF PAGES 1   640
2. CONTRACT NUMBER		3. SOLICITATION NUMBER 89243123RSC000083	4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)		5. DATE ISSUED 01/03/2024
7. ISSUED BY SC Consolidated Service Center - CH Office of Science U.S. Department of Energy 9800 South Cass Avenue Lemont IL 60439		CODE 892430	8. ADDRESS OFFER TO (If other than Item 7) See Section L.15 entitled "Date, Time, and Place Offers/Proposals are Due" *RFP available on FNAL competition website		

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

**SOLICITATION**

9. Sealed offers in original and 1 copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried, in the depository located in \_\_\_\_\_ until 1700 CT local time 03/04/2024  
(Hour) (Date)

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

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

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(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
<input checked="" type="checkbox"/>	A	SOLICITATION/CONTRACT FORM	1	<input checked="" type="checkbox"/>	I	CONTRACT CLAUSES	313
<input checked="" type="checkbox"/>	B	SUPPLIES OR SERVICES AND PRICES/COSTS	3	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
<input checked="" type="checkbox"/>	C	DESCRIPTION/SPECS./WORK STATEMENT	25	<input checked="" type="checkbox"/>	J	LIST OF ATTACHMENTS	97
<input checked="" type="checkbox"/>	D	PACKAGING AND MARKING	2	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
<input checked="" type="checkbox"/>	E	INSPECTION AND ACCEPTANCE	2	<input checked="" type="checkbox"/>	K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	44
<input checked="" type="checkbox"/>	F	DELIVERIES OR PERFORMANCE	6	<input checked="" type="checkbox"/>	L	INSTRS., CONDS., AND NOTICES TO OFFERORS	65
<input checked="" type="checkbox"/>	G	CONTRACT ADMINISTRATION DATA	3	<input checked="" type="checkbox"/>	M	EVALUATION FACTORS FOR AWARD	9
<input checked="" type="checkbox"/>	H	SPECIAL CONTRACT REQUIREMENTS	70				

**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 240 calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

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

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)		
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15B. TELEPHONE NUMBER	AREA CODE	NUMBER	EXT.	15C. CHECK IF REMITTANCE ADDRESS <input type="checkbox"/> IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.	17. SIGNATURE	18. OFFER DATE
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**AWARD (To be completed by government)**

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION	
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304 (c) ( ) <input type="checkbox"/> 41 U.S.C. 253 (c) ( )		23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)	ITEM
24. ADMINISTERED BY (If other than Item 7)	CODE	25. PAYMENT WILL BE MADE BY	CODE
26. NAME OF CONTRACTING OFFICER (Type or print) Judson A. Kingman		27. UNITED STATES OF AMERICA  <i>Judson Kingman</i> (Signature of Contracting Officer)	28. AWARD DATE

**SECTION B**

**SUPPLIES OR SERVICES AND PRICES/COSTS**

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**B.1 SERVICE BEING ACQUIRED**

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

**B.2 OBLIGATION OF FUNDS AND FINANCIAL LIMITATIONS**

The amount presently obligated by the Government with respect to this contract is specified in the Section I Clause entitled “DEAR 970.5232-4 – Obligation of Funds”. Other financial limitations are also specified in the Section I Clause entitled “DEAR 970.5232-4 – Obligation of Funds.”

**B.3 PERFORMANCE FEE**

- (a) The transition activities shall be performed on a cost-reimbursement basis up to the amount specified in the Section H Clause entitled “Activities During Contract Transition”, and no fee shall be paid for these activities.
- (b) In implementation of the Section I Clause entitled “DEAR 970.5215-1 – Total Available Fee: Base Fee Amount and Performance Fee Amount”, the Parties have agreed that the maximum available performance fees that may be earned by the Contractor in accordance with the provisions of Section J, Appendix B entitled “Performance Evaluation and Measurement Plan”, for the performance of the work under this contract commencing January 1, 2025 are as follows:

Base Contract Period:

<b>Performance Period</b>	<b>Performance Fee (to be completed by Offeror)</b>
1/1/2025 – 9/30/2025	
10/1/2025 – 9/30/2026	
10/1/2026 – 9/30/2027	
10/1/2027 – 9/30/2028	
10/1/2028 – 9/30/2029	
10/1/2029 – 12/31/2029	

Base fee under this contract is \$0. All fee dollars shall be in performance fee and at risk.

- (c) The maximum available annual performance fee that may be earned by the Contractor for any additional extensions of the period of performance beyond the five (5) years of the base contract period listed in the table above shall be subject to negotiation between the Parties consistent with the Department of Energy Acquisition Regulation (DEAR) in effect at the time the fee is negotiated.
- (d) At the end of each fiscal year, there shall be no adjustment in the amount of the maximum available performance fee based on differences between any estimate of cost for performance of the work and the actual cost for performance of the work. Fee is subject to adjustment only –
  - 1) Under the provisions of Section I Clause entitled “DEAR 970.5243-1 – Changes”, or other contract provisions; or
  - 2) For a +/- 10 percent change in the estimated fee base of \$531,039,962.
- (e) The key personnel listed in Section I Clause entitled “DEAR 952.215-70 – Key Personnel”, commit to FNAL through September 30, 2026. The Contractor is subject to forfeiture of up to \$300,000, per occurrence, of fee in fiscal years 2025 and 2026 if it removes, replaces, or diverts any of the key personnel listed in Section J, Appendix E entitled “Key Personnel”.

#### **B.4 ALLOWABILITY OF SUBCONTRACTOR FEE**

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

#### **B.5 PROVISIONAL PAYMENT OF PERFORMANCE FEE**

The Contractor may, subject to the approval of the Contracting Officer, be paid provisional performance fee payments consistent with the provisions of the Section I Clause entitled, "DEAR 970.5232-2 – Payments and Advances". The Contractor shall promptly refund to the Government any amount of provisional performance fee paid that exceeds the amount of performance fee earned.



## SECTION C

### DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

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## C.1 INTRODUCTION

Fermi National Accelerator Laboratory (FNAL or the Laboratory) is one of the U.S. Department of Energy's (DOE or the Department) Office of Science (SC) single program laboratories. The Laboratory is a Federally Funded Research and Development Center (FFRDC) established in accordance with the Federal Acquisition Regulation (FAR) Part 35 and operated under this management and operating (M&O) contract, as defined in FAR 17.6 and DOE Acquisition Regulation (DEAR) 917.6.

The mission of the Laboratory is to deliver breakthrough science and technology in the area of high energy physics, and to drive discovery by building and operating world-leading accelerator and detector facilities, performing pioneering research with national and global partners, and developing new technologies for science that support U.S. industrial competitiveness. DOE programs are carried out in partnership with academia, the private sector, other DOE national laboratories, the international scientific community, and other government agencies. The Laboratory also performs work consistent with the DOE mission for entities other than DOE. The Contractor will advance the frontiers of science and technology through broad interdisciplinary R&D programs that answer fundamental questions, solve technical problems (locally, regionally, nationally, and internationally), and develop and apply technologies to address societal needs.

DOE employs a Performance Based Management Contract (PBMC) to enable the Contractor to achieve highly effective and efficient management of the Laboratory resulting in a safe and secure environment, outstanding science and technology results, more cost-effective operations, and enhanced Contractor accountability.

The Contractor has the responsibility for total performance under the contract, including determining the specific methods for accomplishing the work effort, performing quality control, and assuming accountability for accomplishing the work under the contract. Accordingly, this PBMC provides flexibility, within the terms and conditions of the contract, to the Contractor in managing and operating the Laboratory.

Desired results of this contract include improved Contractor operational efficiencies, allocations of Contractor oversight resources to direct mission work, and streamlined and more effective line management focused on a systems-based approach with increased reliance on the results obtained from certified, nationally recognized experts and other independent reviewers.

Under this PBMC, it is the Contractor's responsibility to develop and implement innovative approaches and adopt practices that foster continuous improvement in accomplishing the mission of the Laboratory. DOE expects the Contractor to employ effective and efficient management structures, systems, and operations that maintain high levels of quality, safety and security in accomplishing the work

required under this contract, and that, to the extent practicable and appropriate, rely on national, commercial, and industrial standards that can be verified and/or certified by independent experts.

## **C.2 IMPLEMENTATION OF DOE'S MISSION FOR FNAL**

The Laboratory's mission focus is in high energy particle physics. FNAL brings specific strengths and competencies to the DOE laboratory system to produce excellent science and advanced technologies with the cooperation and involvement of the scientific and regional communities. In support of its SC mission, FNAL builds and operates major scientific facilities. These facilities serve not only the basic research of the DOE, but they reflect FNAL and DOE stewardship of national research infrastructure that is made available on a competitive basis to a wide range of university, industry, and government researchers.

## **C.3 CORE EXPECTATIONS**

### **(a) General**

The relationship between DOE and its national laboratory management and operating contractors is designed to bring best practices for research and development to bear on the Department's missions. Through application of these best practices, the Department seeks to assure both outstanding programmatic and operational performance of today's research programs and the long-term quality, relevance, and productivity of the laboratories against tomorrow's needs. Accordingly, DOE has substantial expectations of the Contractor in the areas of: program delivery (or development) and mission accomplishment; laboratory stewardship; and excellence in laboratory operations and operational business management.

### **(b) Program Development and Mission Accomplishment**

The Contractor is expected to provide effective planning, management, and execution of assigned research and development programs. The Contractor is expected to execute assigned programs so as to strive for the greatest possible impact on achieving DOE's mission objectives, to aggressively manage the Laboratory's science and technology capabilities and intellectual property to meet these objectives, and to bring forward innovative concepts and research proposals that are well-aligned with DOE missions. The Contractor shall propose work that is aligned with, and likely to advance, DOE's mission objectives, and that is well matched to Laboratory capabilities. The Contractor shall strive to meet the highest standards of scientific quality and productivity, "on-time, on budget, as promised" delivery

of program deliverables, and first-rate service to the research community through user facility operation.

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

**(c) Laboratory Stewardship**

The Contractor shall be an active partner with DOE in assuring that the Laboratory is renewed and enhanced to meet future mission needs. Within the constraints of available resources and other contract requirements, the Contractor, in partnership with DOE, shall:

- (1) Maintain an understanding of DOE's evolving Laboratory vision and long-term strategic plan and address the evolution of Laboratory capabilities to meet anticipated DOE and national needs.
- (2) Attract, develop, and retain an outstanding work force, with the skills and capabilities to meet DOE's evolving mission needs.
- (3) Renew and enhance research facilities and equipment so that the Laboratory remains at the state-of-the-art over time and is well-positioned to meet future DOE needs.
- (4) Build and maintain a viable portfolio of research programs that generates the resources required to renew and enhance Laboratory research capabilities over time.
- (5) Build and maintain a positive relationship with the broader national and international research community, to enhance the intellectual vitality and research relevance of the Laboratory, and to bring the best possible capabilities to bear on DOE mission needs through partnerships.
- (6) Build a positive, supportive relationship founded on openness and trust with the regional community.

**(d) Operational and Business Management**

The Contractor shall effectively and efficiently manage and operate the Laboratory through best-in class management practices designed to foster world-class research. Contractor shall, at the same time, protect and properly maintain DOE property, facilities, and intellectual assets; as well as

ensure the health, safety and security of workers, the public and the environment. The Contractor shall operate the Laboratory in accordance with all applicable laws, regulations, and requirements. The Contractor shall manage the Laboratory cost-effectively, while providing the greatest possible research output per dollar of research investment, and, accordingly, develop, deploy and maintain integrated management systems and practices that are designed to enhance research quality, productivity and mission accomplishment consistent with meeting operational requirements.

#### **C.4 STATEMENT OF WORK**

##### **(a) General**

The Contractor shall, in accordance with the provisions of this contract, provide the intellectual leadership and management expertise necessary and appropriate to manage, operate, and staff Fermi National Accelerator Laboratory (FNAL) (also referred to as "Fermilab"); to accomplish the missions assigned by DOE to the Contractor; and, to perform all other work described in this Statement of Work (SOW). DOE missions are assigned through strategic planning, program coordination, and cooperation between the Contractor and DOE.

Inasmuch as the assigned missions of the Laboratory are dynamic, this SOW is not intended to be all-inclusive or restrictive, but it is intended to provide a broad framework and general scope of the work to be performed at FNAL during the term of this contract. This SOW does not represent a commitment to, or imply funding for, specific projects or programs. All direct work will be authorized by DOE in accordance with the provisions of this contract.

All work under this contract shall be conducted in a manner that protects the environment, assures the safety, health, and security of employees and the public, and protects the safety and security of federal real, personal, and intellectual property. In performing the contract work, the Contractor shall implement appropriate program, operational and project management systems to ensure safe operations; track progress and maximize cost- effectiveness of work activities; develop integrated plans and schedules to achieve program objectives incorporating input from DOE and stakeholders; maintain sufficient technical expertise to manage activities and projects throughout the life of a program; utilize appropriate technologies and management systems to improve cost efficiency and performance; and, maintain Laboratory facilities and infrastructure as necessary to accomplish assigned missions.

##### **(b) Research and Development (R&D)**

The central mission of the Laboratory is to provide scientific leadership needed to carry out world class science and technological innovation to support the programs and missions of SC and DOE (<https://www.energy.gov/science/science-programs>). While the Laboratory is primarily involved with areas of high energy physics research, it also serves key roles in other programs sponsored by DOE through direct involvement or application of capabilities that potentially impact multiple disciplines. A central aspect of this mission, often involving all of its core competencies, is the conceptualization, design, construction, and operation of major scientific user facilities available to university, industry and government researchers.

**(1) Mission Accomplishment**

The science and technology delivered by the Laboratory is to have meaningful impacts on the relevant technical fields and provide quality leadership that advances the mission goals of the DOE, the sponsoring program, and the scientific community. The primary sponsor of work at the Laboratory is DOE Office of Science.

Additionally, the Contractor is authorized to pursue other DOE and non-DOE programs, subject to required approvals, such as Strategic Partnership Projects (SPP), Cooperative Research and Development Agreements (CRADA) and Laboratory Directed Research and Development (LDRD), that serve to integrate core capabilities and deploy science and technology to industry in support of the broader DOE mission. Other DOE program sponsors may include National Nuclear Security Administration (NNSA), Environmental Management (EM), Energy Efficiency and Renewable Energy (EERE), etc.

The Contractor is expected to maintain a forward-looking science and technology portfolio that is engaged with and cognizant of scientific priorities and emerging opportunities across SC, while also delivering world-leading research for its primary sponsors. This effort typically involves multi-institution collaborations, including universities, other national laboratories and research institutes, the international scientific community, and the private sector; thus, a strong cooperative approach with well-chosen leadership roles is highly desired. The current major programs and synergistic efforts are summarized below:

**(i) SC High Energy Physics (HEP)**

SC HEP is the largest sponsor of work at FNAL. The focus of this work targets frontier research in experimental and theoretical high energy physics and closely related fields such as cosmology; the contractor shall provide intellectual and technical leadership in international particle physics experiments; perform research and development in accelerator science, experimental detector design and computing for the SC HEP program, operate HEP sponsored user facilities, centers, and initiatives and carry out construction projects supporting high energy physics area as assigned.

**(ii) SC Basic Energy Sciences (BES)**

The Contractor shall support world-class major scientific user facilities in furtherance of BES research priorities. Principal efforts include the Linac Coherent Light Source-II and application of knowledge and capabilities to support the planning and delivery of future accelerators.

**(iii) Other Programs**

The Contractor is responsible for the conduct of such other programs and activities as the Parties may mutually agree, including:

- (A) The providing of the facilities of the Laboratory to the personnel of public and private institutions for the conduct of research, development, and demonstration work, either within the general plans, programs and budgets agreed upon from time to time between DOE and the Contractor, or as may be specifically approved by DOE. The Laboratory facilities shall be made available on such other general bases as DOE may authorize or approve;
- (B) The conduct of research and development work for non-DOE sponsors which is consistent with and complementary to the DOE's mission and the Laboratory's mission under the contract, and does not adversely impact or interfere with execution of DOE-assigned programs, does not place the facilities or Laboratory in direct competition with the private sector and for which the personnel or facilities of the Laboratory are particularly well adapted and available, as may be authorized, in

writing, by the Contracting Officer;

- (C) The dissemination and publication of unclassified scientific and technical data and operating experience developed in the course of the work;
- (D) The furnishing of such technical and scientific assistance (including training and other services, material, and equipment), which are consistent with and complementary to the DOE's and Laboratory's mission under this contract, both within and outside the United States, to the DOE and its installations, Contractors, and interested organizations and individuals.

**(2) Research Facilities and Major Scientific User Facilities**

Central to the Laboratory's leadership and research and development mission is the design, construction and operation of world-class major scientific user facilities and their utilization to provide impactful science and technology results to DOE, the scientific community, and industry. The Laboratory currently hosts major scientific user facilities for DOE serving thousands of scientists per year. The Contractor is responsible for simultaneously maintaining complementary capabilities critical to leadership and excellence in design, construction, and operation of scientific user facilities in continuous and close collaboration with DOE. Design ranges from upgrades of current facilities to conceptualizing new facilities that meet the evolving needs of state-of-the-art science with new instrumentation technologies. Construction is typically a multi-year, complex process requiring extremely detailed planning and execution to meet requirements on time and within resource limits. Operation requires efficient and effective integration of a wide range of activities including core research programs, research, and development to maintain the capabilities of the facilities, partnerships involving multiple organizations and funding sources, and user support; underpinned and enabled by excellence in safety, security, and business and operational management systems, and productivity. Operation also includes effectively managing the allocation of facility time to optimize the research program of the facility.

The operation of user facilities includes developing and maintaining user communities for the facilities. In addition to the scientific stewardship of the facilities, maintaining user communities requires stewarding the visiting scientists and



students that are guests of the Laboratory every year as well as management of the agreements to engage the user facilities. The Contractor shall maintain effective operations of existing and planned user facilities, onsite lodging (as available), other appropriate facilities, and provide effective customer service to ensure user facilities are well maintained, safe, secure, and user friendly.

**(i) HEP User Facility**

Fermilab Accelerator Complex is operated as a user facility and consists of four accelerators that work together to provide world-class particle beams for experiments.

Booster Neutrino Beam: The Booster accelerator is a ring 1,500 feet in circumference that receives 400 MeV protons from the linac and accelerates them to 8 GeV. These protons are used to generate secondary particle beams to serve the experimental program. The Booster Neutrino Beam is produced to serve several operating and planned Short-Baseline Neutrino (SBN) oscillation experiments.

Muon Campus: A portion of the proton beams are extracted to create muon beamlines serving the Fermilab Muon Campus beginning in 2016 where the presently-running Muon g-2 experiment is situated and the Muon-to-electron Conversion (Mu2e) experiment is under development.

Neutrinos at the Main Injector (NuMI): The Main Injector takes the 8 GeV energy protons from the Booster and accelerates them to 120 GeV. These highly energetic protons strike a carbon target to generate muons that subsequently decay to muon neutrinos, resulting in the most intense neutrino beam in the world. The muon neutrino beam is used for studies of both the disappearance of muon neutrinos and the appearance of electron and tau neutrinos. Two experiments currently gather data from the NuMI beam line, a third is starting operations, and a fourth is proposed.

Proton Improvement Plan-II (PIP-II): PIP-II comprises an 800 MeV linear accelerator, or linac, based on superconducting radio-frequency (SRF) technologies. Recent advancements in SRF technologies, both at Fermilab and at partner laboratories in the U.S. and around the world, allow the construction of this unique accelerator.

Upon completion, PIP-II will accelerate protons at up to 800 MeV, over its 215-meter length, with an instantaneous beam power of more than 1 megawatt.

**(ii) HEP Scientific Areas and Experiments**

MicroBooNE: This 170 ton experiment which began operations in 2015, measures low energy neutrino cross sections and investigates the unexpected excess events observed by the MiniBooNE experiment. The detector serves as the necessary next step in a phased program towards the construction of massive, kiloton scale liquid argon time projection chamber (LArTPC) detectors, the preferred technology for the future Deep Underground Neutrino Experiment (DUNE). Data taking with MicroBooNE has completed and several research papers have been published, with more analyses underway.

ICARUS: The ICARUS collaboration is investigating signs of physics that may point to a new kind of neutrino called the sterile neutrino. Other experiments have made measurements that suggest a departure from the standard three-neutrino model. ICARUS is also to be investigating the various probabilities of a neutrino interacting with different types of matter as well as neutrino-related astrophysics topics. Commissioning of the detector started in 2021 and initial data-taking has begun.

Short-Baseline Near Detector (SBND): The SBND will be one of two liquid argon neutrino detectors sitting in the Booster Neutrino Beam (BNB) at Fermilab as part of the Short-Baseline Neutrino Program. The ICARUS-T600 is the “far” detector in the program, a refurbished 760 ton LArTPC device 600 m downstream from the BNB neutrino source. SBND is a new 112 ton active volume LArTPC located only 110 m from the source employing many of the design features of the planned DUNE detectors. These activities are hosted at Fermilab involving large scale international collaboration. The SBND was recently completed and moved to the detector hall and is anticipated to begin installation and commissioning in 2023. SBND will record over a million neutrino interactions per year. By providing such a high statistics measurement of the un-oscillated content of the booster neutrino beam, SBND is a critical element in performing searches for neutrino oscillations at the Fermilab Short-Baseline Program.

Muon g-2: The Standard Model of Particle Physics makes detailed and very precise predictions about the behavior of muon particles in the presence of a strong magnetic field. The Muon g-2 experiment was designed to achieve world-record precision in measuring these behavior of muons (to one part in a billion). The experiment is a great test of the Standard Model and any deviation from the predictions will constitute a major discovery. After starting data collection in 2018, the experiment released its first results in spring 2021 and expects to announce results with 4X more data in 2023.

Mu2e: The Mu2e experiment searches for a very rare process called muon-to- electron conversion with a sensitivity almost 10,000 times greater than previous experiments, opening a significant window for new discoveries. Observing muon-to-electron conversion will remove a hurdle to understanding why particles in the same category, or family, decay from heavy to lighter, more stable mass states. Physicists have searched for this since the 1940s. Discovering this is central to understanding what physics lies beyond the Standard Model. The experiment is presently completing its construction phase and will be moving into installation and testing.

NOvA: The NOvA far detector in Ash River, MI utilizes the NuMI beam to directly observe and measure the transformation of muon neutrinos into electron neutrinos with great precision. NOvA will also make important indirect measurements of the mass ordering of the three known neutrino types, which will be a key piece of information in determining the currently unknown masses of neutrinos.

DUNE: DUNE is a leading- edge, international experiment for neutrino science and proton decay studies. DUNE will consist of two neutrino detectors placed in the world's most intense neutrino beam. One detector will record particle interactions near the source of the beam, at Fermilab in Illinois. A second, much larger, modular detector will be installed more than a kilometer underground at the Sanford Underground Research Laboratory in Lead, South Dakota – 1,300 kilometers downstream of the source. DUNE has three scientific thrusts: exploring whether and how neutrinos might be the reason the universe is made of

matter; using neutrinos as a probe of astrophysical objects ranging from our own Sun to distant supernovae; and moving closer to realizing Einstein's dream of a unified theory of matter and energy by searching for proton decay.

Quantum Science: Fermilab operates the Superconducting Quantum Materials System Center, one of five DOE National Quantum Information Science Research Centers, where FNAL is leading research in areas including: quantum computing applications and simulations, quantum sensing, quantum communications, electronics and controls for quantum information science.

MAGIS-100: The Matter-wave Atomic Gradiometer Interferometric Sensor, also known as MAGIS-100, is a pathfinder quantum instrument under construction at Fermilab that aims to explore fundamental physics with a 100- meter-long atom interferometer. This novel detector will search for ultralight dark matter, test quantum mechanics in new regimes and pave the way for future gravitational wave detectors. The detector will be housed in a 100- meter-deep shaft at Fermilab that was constructed for a neutrino experiment many years ago. To explore aspects of long-distance quantum entanglement, scientists will drop groups of atoms down a vacuum tube, probed by beams of laser light.

**(iii) HEP International Collaborations**

In accordance with DOE policies, and in consultation with DOE, the Contractor shall maintain a broad program of international collaboration in areas of research of interest to the Laboratory and to DOE. FNAL is the host laboratory for a number of experiments with large international participation, both ongoing and under construction, including the Deep Underground Neutrino Experiment and the Short Baseline Neutrino Program.

Fermilab routinely engages with the Large Hadron Collider (LHC) program at CERN, Geneva, Switzerland, including the Compact Muon Solenoid (CMS) experiment. FNAL serves as the lead laboratory for the planned US contributions to the LHC accelerator and the CMS detector. It also hosts a CMS remote control room and a very active research program for American researchers.

In support of these programs, the Contractor also performs high performance scientific computing and grid computing in support of Fermilab's major research facilities and international efforts as directed.

Working with DOE Office of Science, the Contractor is closely involved in developing and implementing many aspects of the international agreements that enable these collaborative programs, including overseeing day-to-day execution of US-based projects and research activities with a wide array of international partners and collaborators. The Contractor ensures safe and reliable access to facilities required to perform these activities.

**(iv) Accelerator Research and Development**

The primary technology of particle physics is that of accelerators, and the advance of the field has been closely tied to breakthroughs in accelerator development. Those advances have also driven new discoveries and enabled completely new capabilities in other leading research areas supported by the Office of Science. The Contractor is expected to continue to perform a significant role in research, development and fabrication support in these technologies, and broadly engages with other communities, for scientific applications across a broad spectrum of research.

Long-term research goals include developing technologies to enable breakthroughs in particle accelerator size, cost, beam intensity, and control, with research activities categorized into five thrust areas: 1) accelerator and beam physics; 2) advanced acceleration concepts; 3) particle sources and targetry; 4) radio-frequency acceleration technology; and 5) superconducting magnets and materials. The laboratory has unique or leading capabilities in several of these areas, including SRF cavity fabrication, testing and performance enhancement; high-field magnet development and testing; and high-power target development. These are critical testbeds that enable the national program in advanced accelerator technology R&D.

In addition, the mission of the Fermilab Accelerator Science and Technology (FAST) Facility is to develop a fully-equipped R&D accelerator chain intended to support

research and development of accelerator technology for the next generation of particle accelerators. The primary focus of this effort is the Integrable Optics Test Accelerator (IOTA) ring, which will be able to accept injection with either of the following:

- 150 MeV electrons from a photoinjector-based superconducting RF linear accelerator.
- 2.5 MeV protons (H+) from the IOTA proton injector.

### **(3) Scientific Program Management**

The Contractor shall manage the resources and capabilities of the Laboratory and provide leadership for the Laboratory as a scientific institution supporting the DOE mission. Leadership is essential in methods of integrated line management to ensure intra- and inter-laboratory team building and cooperation while supplying a safe working environment. The Contractor is charged with maintaining and enhancing the intellectual resource base in order to avoid erosion of the scientific and engineering foundations at the Laboratory and to promote world leadership prominence in areas as mandated by SC. The Contractor is also responsible for the employment of the principal personnel engaged in the SOW efforts and for the readiness and training of all personnel and on-site facility users and collaborators.

Execution of the Laboratory's mission is built on its core capabilities that are each, in turn, an integration of Laboratory personnel, facilities and equipment. The current Laboratory core capabilities include Particle Physics, Large Scale User Facilities and Advanced Instrumentation, Accelerator Science and Technology, and Advanced Computer Science, Visualization and Data. These capabilities exist within the Laboratory and provide a foundation to deliver its mission and customer focus, to perform a complementary role in the DOE laboratory system, and to pursue its vision for scientific excellence and pre-eminence in support of the SC and DOE missions. The stewardship of these capabilities, involving continuous improvement and development of new capabilities where required, is thus a critical aspect of the Contractor's responsibility for scientific program management at the Laboratory. The Contractor shall direct these core capabilities into creative research projects for DOE in partnership(s) with universities, other federal laboratories and agencies, the international scientific community, and the private sector to meet the mission of the Laboratory and DOE objectives.

The Contractor shall develop and manage partnership activities in support of the DOE mission. Mechanisms for partnerships include strategic partnership projects, cooperative research and development agreements, direct assistance programs, employee temporary assignments, user facility agreements, memoranda of cooperation, memoranda of understanding, memoranda of agreement, license agreements, privately funded technology transfer, and other arrangements as approved by DOE in which research and development resources are leveraged with private sector partners. Efforts to develop broad based partnerships with academic research institutions, other agencies, other DOE laboratories, the international scientific community, and with the private sector are essential to the long-term viability of the Laboratory.

The Contractor shall ensure the Laboratory contributes to U.S. technological competitiveness by conducting basic and applied research, and through development and demonstration activities facilitating transfer and deployment of technologies into useful products and processes through partnerships with the private sector. The Contractor shall make it possible for the private sector to join in development/operation activities with the Laboratory to enhance teamwork and technology transfer. Cooperation with industrial partners may include long-term strategic partnerships aimed at commercialization of Laboratory inventions or the improvement of industrial products. The Contractor shall respond to specific near-term technological needs of industrial companies with special emphasis given to working with the types of businesses identified in the Small Business Subcontracting Plan clause of this contract. The Contractor may also capitalize on its location by developing productive relationships with regional and local companies and through forums such as conferences, workshops, and traveling presentations. It is anticipated that these organizations will be particularly effective participants in the Laboratory's technology transfer activities in promoting a mutually beneficial relationship between DOE and the communities surrounding the Laboratory.

**(c) Protection of Workers, the Public, and the Environment**

The safety and health of workers and the public and the protection and restoration of the environment are fundamental responsibilities of the Contractor. The Contractor shall establish an environment, safety and health (ES&H) program operated as an integral, but visible, part of how the organization conducts business, including prioritizing work and

allocating resources based on risk reduction. A key element is implementation and sustainment of an Integrated Safety Management System to ensure all work activities are performed in a manner that prevents disruption of the Laboratory's missions by preventing fatalities, minimizing injuries and illnesses, minimizing exposures to hazardous substances and materials, preventing environmental releases in excess of established limits, implements as-low-as-reasonably-achievable releases and exposures, and preventing property loss.

The Contractor shall maintain an organization that supports effective ES&H management by ensuring appropriate levels of ES&H staffing and competence at every level within FNAL. Specifically, the Contractor shall assure that employees are trained, qualified, and involved in aspects of the organization's activities, including providing input to the planning and execution of work, and identification, mitigation, or elimination of workplace hazards. The Contractor shall, similarly, assure that subcontractor employees are trained and qualified on job tasks, hazards, DOE and FNAL safety policies, expectations, and requirements, and shall flow down applicable ES&H requirements down to subcontractors. The Contractor shall, as appropriate, consider ES&H performance in selection of its subcontractors and incorporate ES&H requirements into subcontracts.

The Contractor shall perform all activities in compliance with applicable health, safety, and environmental laws, orders, regulations, national consensus standards, governing agreements and permits executed with regulatory and oversight government organizations.

Incorporating integrated line management, the Contractor shall put in place a system that clearly communicates the roles, responsibilities, and authorities of line managers. The Contractor shall hold line managers, including direct reports, accountable for implementing necessary controls for safe performance of work in their respective area of responsibility. The Contractor shall establish effective management systems to identify deficiencies, resolve them in a timely manner, ensure that corrective actions are implemented, (addressing the extent of conditions, root causes, and measures to prevent recurrence) and prioritize and track commitments and actions.

**(d) Management and Operation of the Laboratory**

The Contractor shall manage, operate, protect, maintain, and enhance the Laboratory's ability to function as a DOE national laboratory, provide the infrastructure and support activities, support the accomplishment of the Laboratory's missions, and assure the accountability to the DOE under the results-oriented, performance-based provisions of this



contract. The Contractor shall establish and maintain an integrated management system capable of producing implementation-level plans, programs and procedures for the management and operation of the Laboratory. The Contractor shall implement a broad scope contractor assurance program to assess the overall performance in and drive continuous improvement of Laboratory operations and management.

**(1) Strategic Planning**

The Contractor shall conduct a strategic planning process and develop institutional business plans and strategic facility plans in consideration of DOE provided planning guidance and strategic planning material to assure consistency with DOE missions and goals.

**(2) Business Management**

**(i) Human Resources Management (HR)**

The Contractor shall have an HR system designed to attract and retain outstanding employees in accordance with DOE expectations, policies, and procedures. The Contractor shall maintain a market-based system of compensation and benefit plans to motivate employees to achieve high productivity in scientific research and laboratory operation.

The Contractor also shall create and maintain at the Laboratory an environment that promotes equity, diversity, and inclusion (DEI); and fully utilizes the talents and capabilities of a diverse workforce. This includes but is not limited to: maintaining best practices in DEI space as they relate to science, technology, engineering, and math (STEM) disciplines; communicating frequently and clearly with community on these topics; evidence-based evaluation of existing program and policies; and establishing, developing, and maintaining effective relationships with institutions and individuals working to support traditionally underrepresented groups and improve inclusion in STEM fields.

**(ii) Financial Management**

The Contractor shall maintain a financial management system responsive to the obligations of sound financial stewardship and public accountability. The overall system

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

**(iii) Purchasing Management**

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

The Contractor shall also strive to promote diversity in all of the Laboratory's subcontracting efforts with emphasis on the use of the types of businesses identified in the Small Business Subcontracting Plan clause of this contract, as well as full and open competition.

**(iv) Property Management**

The Contractor shall have and manage a DOE-approved property management system that provides assurance that the Government-owned, contractor-held property is accounted for, safeguarded, and disposed of in accordance with DOE's expectations and policies. The Contractor shall perform overall integrated effective and compliant planning, acquisition, maintenance, operation, management, and disposition of Government-owned personal and real property, and any Contractor-leased facilities and infrastructure used by the Laboratory in accordance with DOE expectations.

**(v) Legal Services**

The Contractor shall maintain legal support for all contract

activities including, but not limited to, those related to patents, licenses, and other intellectual property rights; subcontracts; technology transfer; environmental compliance and protection; employee and labor relations; contractor ethics; and litigation and claims.

**(vi) Information Technology Management**

The Contractor shall maintain information systems necessary to meet Laboratory requirements, which includes activities involving general purpose programming, data collection, data processing, report generation, software, electronic and telephone communications, and cyber security. The Contractor shall provide computer resource capacity and capability sufficient to support Laboratory-wide information management requirements.

**(vii) Other Services**

The Contractor shall provide other services necessary for Laboratory operations, including support to the DOE Fermi Site Office.

In addition, the Contractor shall perform all activities necessary resulting from the termination of Superconducting Super Collider Laboratory (SSCL) Contract No. DE-AC35-89ER40486.

**(3) Project Management**

The Contractor shall maintain a project management system, consistent with DOE project management requirements, to ensure that projects are completed within scope, budget, and schedule.

**(4) Environmental Management**

Unless otherwise directed by the Contracting Officer, the Contractor shall plan and execute the DOE's environmental program activities in accordance with DOE program goals, initiatives, strategies, guidance letters, and approved project baselines in areas such as:

- (i) Environmental remediation and facility deactivation, decommissioning, decontamination, and demolition in accordance with the site's Comprehensive Environmental Response Compensation and Liability Act (CERCLA) Interagency Agreement and with DOE Orders;

- (ii) Construction and maintenance of facilities and infrastructure to provide adequate protection of the public, employees, the environment, and Government-owned materials, facilities, and equipment; and
- (iii) Tritium management.

The environmental management program shall be conducted in a safe and cost-effective manner leading to increasing DOE, regulatory and public confidence in cleanup efforts. Program elements will include:

- (i) Implementing comprehensive project management systems to track progress, maintain regulatory compliance, and increase cost effectiveness of work activities;
- (ii) Developing integrated plans and schedules for involving the participation of DOE, regulators, and other stakeholders in decision making and priority setting of environmental restoration activities; and
- (iii) Maintaining technical depth to propose and implement cleanup activities commensurate with commercial practices in the areas of cost, implementation, schedule, and public acceptability.

The Contractor shall establish and maintain systems to effectively manage and implement an environmental restoration program in accordance with goals and objectives set forth by the Department. The systems must ensure that the technical approach is consistent with DOE cleanup strategies to complete all Records of Decision in accordance with the current approved baseline; to implement an overall system to effectively and efficiently manage all groundwater and contaminated soil cleanup activities; to expedite final disposition of facilities awaiting decommissioning and decontamination; and to achieve delisting from the National Priority List. Contractor support shall be provided to DOE as directed by the Contracting Officer.

#### **(5) Community Involvement**

The Contractor shall maintain a systematic approach and commitment to engagement with the regional community. The Contractor's overall community involvement program shall:

- maintain a strong, integrated, proactive community involvement and communications program;
- appropriately address the community's substantive concerns;
- ensure the community's awareness of the importance of the long-term basic research supported by DOE and the SC;
- ensure the community has positive relationships with the Laboratory and confidence in its decision-making processes; and
- establish constructive external partnerships in support of DOE's overarching mission and strategic objectives.

**(6) Safeguards and Security (S&S)**

The Contractor shall provide a fully integrated safeguards and security program to ensure that laboratory sensitive information, property and other interests and activities are protected from theft, diversion, terrorist attack, industrial sabotage, radiological sabotage, chemical sabotage, biological sabotage, espionage, unauthorized access, compromise, and other acts that may have an adverse impact on national security; the environment; or pose significant danger to the health and safety of DOE Federal and contractor employees or the public. S&S programs must be based on the results of vulnerability and risk assessments which are used to design and provide graded protection in accordance with an asset's importance or the impact of its loss, destruction, or misuse. The Contractor shall provide a secure environment protecting property and other assets through the conduct of an integrated risk-based approach to security operations. The Contractor shall establish and maintain policies and procedures for operations in accordance with established DOE requirements. The Contractor shall establish a training program which ensures appropriate personnel are competently trained, and fully qualified to perform the tasks within their assigned responsibilities under both normal and emergency conditions.

**(7) Cyber Security**

The Contractor shall ensure the development, operation, management, and integration of an ongoing program for cyber security management consistent with DOE requirements. The Cyber Security Program must assess risks associated with computer and network security from both external and internal

perspectives. The Contractor shall develop and maintain a structured Cyber Security risk management process to ensure that priorities are established and cyber security risks are managed through a process of identifying and assessing threats, vulnerabilities, asset value, and existing protection measures; developing and implementing appropriate policies and controls; promoting awareness of those policies and controls; and monitoring, evaluating, and improving the effectiveness of policies and controls.

**(8) Emergency Management**

The Contractor shall maintain an emergency management system in accordance with DOE requirements including, but not limited to, emergency preparedness plans, procedures, response, drills and exercises, occurrence notification and reporting, and operation of an Emergency Operations Center.

**(9) Waste Management**

The Contractor shall maintain and manage a waste management program in an integrated manner such that waste is managed consistently and in compliance with all applicable regulatory requirements and DOE expectations. Waste management activities include: timely characterization, consolidation, segregation, and storage of waste; treatment that complies with storage and/or disposal criteria; efficient shipment of waste for treatment, storage, and/or disposal; maintaining sufficient and compliant waste storage space at the Laboratory to accommodate waste generation and waste backlog; and implementation of an effective waste minimization and pollution prevention programs.

**(10) Laboratory Facilities and Infrastructure**

The Contractor shall manage and maintain government-owned buildings and facilities at the Laboratory, together with the utilities and associated infrastructure. Recognizing that these facilities are a national resource, they may also be made available, with appropriate agreements, to private and public sector entities including universities, industry, and local, state, and other government agencies. The Contractor shall perform overall integrated planning, acquisition, upgrades, and management of Government-owned, leased, or controlled facilities and real property accountable to the Laboratory. The Contractor shall strive to employ facilities management practices that are best-in-

class and integrated with mission assignments and business operations. The maintenance management program shall strive to maintain Government property in a manner that promotes and continuously improves operational safety, worker protection, environmental protection and compliance, property preservation, and cost effectiveness; ensures continuity and reliability of operations, fulfillment of program requirements, and protection of life and property from potential hazards; and ensures the condition of the assets will be maintained or improved using risk-benefit analysis tools and processes. Adequate investment will be applied to prevent degradation and assure appropriate operation.

The Contractor will implement a capital renewal program to revitalize and/or replace facilities and infrastructure that cannot meet the required functionality in support of mission accomplishment or is inefficient or cannot be adequately maintained.

**(11) Sustainability**

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 Orders. The Contract will support DOE's use of Energy Savings Performance Contracts (ESPC) and Utility Energy Services Contracts (UESC). The Contractor shall maintain and update, as appropriate, its Site Plan to include detailed plans and milestones for achieving site-specific energy efficiency goals and objectives.

**(e) University and Science Education Program for Workforce Development**

The Contractor shall help ensure that DOE has a sustained pipeline for the science, technology, engineering, and mathematics (STEM) workforce.

To this end, the Contractor shall seek to facilitate the laboratory workforce of tomorrow by working with colleges and universities, with special emphasis on Historically Black Colleges and Universities/Minority Institutions and initiate new programs to enhance science and mathematics education at all levels. The Contractor shall encourage participation by a diverse group of faculty and students in Laboratory programs to bring their talents to bear on important research problems and contribute to the education of future scientists and

engineers. The Contractor shall also conduct programs for students and faculty to enrich mathematics and science education. A particular purpose of these programs is to encourage members of under-represented societal groups to enter careers in science and engineering needed by the laboratory.

The Contractor shall maintain its programs of cooperation with the academic and educational community and with nonprofit research institutions for the purpose of promoting research and education in scientific and technical fields of interest to DOE's programs and the laboratory workforce needs. This cooperation may include, but is not limited to, such activities as:

- (1) Operation of the U.S. Particle Accelerator School;
- (2) Joint experimental programs with colleges, universities, and nonprofit research institutions;
- (3) Interchange of college and university faculty and Laboratory staff;
- (4) Student/teacher educational research programs at the pre-collegiate and collegiate level;
- (5) Post-doctoral programs;
- (6) Arrangement of regional, national, or international professional, meetings or symposia;
- (7) Use of special Laboratory facilities by colleges, universities, and nonprofit research institutes; or,
- (8) Provision of unique experimental materials to colleges, universities, or nonprofit research institutions or to qualified members of their staffs.

All work in this area must align to mission and workforce needs, funding availability, and appropriate controls to assure responsible execution.

## **C.5 PLANS AND REPORTS**

The Contractor shall submit periodic plans and reports, in such form and substance as required by the Contracting Officer. These periodic plans and reports shall be submitted at the intervals, to the addresses, and in the quantities as specified by the Contracting Officer. Where specific forms are required for individual plans and reports, the Contracting Officer shall provide such forms to the Contractor. The



Contractor shall require subcontractors to provide reports that correspond to data requirements the Contractor shall be responsible for submitting to DOE. Plans and reports submitted in compliance with this provision are in addition to any other reporting requirements found elsewhere in other clauses of this contract. It is the intent of DOE to consult with the Contractor to determine the necessity, form, and frequency of any reports required to be submitted by the Contractor to DOE under this contract.

## SECTION D

### PACKAGING AND MARKING

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## **D.1 PACKAGING**

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

## **D.2 MARKING**

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

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

## **SECTION E**

### **INSPECTION AND ACCEPTANCE**

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**E.1 FAR 52.246-9 – INSPECTION OF RESEARCH AND DEVELOPMENT (SHORT FORM) (APR 1984)**

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

## SECTION F

### DELIVERIES OR PERFORMANCE

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## **F.1 PERIOD OF PERFORMANCE**

- (a) This contract shall be effective as specified in Block No. 28 – Award Date, of the Standard Form 33, and shall continue up to and including December 31, 2029, unless sooner terminated according to its terms. The contract may be extended in accordance with Section F Clause entitled “Award Term Incentive”.
- (b) The contract transition period is from the award date through December 31, 2024. The Contractor will assume full operational control of the Laboratory on January 1, 2025.
- (c) The contract’s maximum period of performance, including the transition period and award term(s), if earned, shall not exceed 20 years and three (3) months.

## **F.2 AWARD TERM INCENTIVE**

### **(a) Definitions**

For purposes of this Subsection F.2:

- (1) “Award Term Determination Official (ATDO)” means the Department of Energy official designated to determine whether the Contractor has met the contractual requirements in order to earn any award term extension during an evaluation period. The ATDO and the Fee Determination Official (FDO) may be the same person.
- (2) “Base Term”, for purposes of Subsection F.2 only, means the period of performance commencing on the date the Contractor assumes full responsibility for the Laboratory pursuant to the provisions of Section H Clause entitled “Activities During Contract Transition”, through the end date specified in Section F Clause entitled “Period of Performance”.
- (3) All ratings of Contractor performance are defined in Section J, Appendix entitled “Performance Evaluation and Measurement Plan”.
- (4) “Initial Evaluation Period” means the first three performance evaluation periods of the contract term (first performance evaluation period – January 1, 2025 through September 30, 2025; second performance evaluation period – October 1, 2025 through September 30, 2026; and third performance evaluation period – October 1, 2026 through September 30, 2027).

**(b) Eligibility for Award Term Extensions**

In order for the Contractor to earn a contract term extension pursuant to the award term incentive:

- (1) With respect to the evaluation of the initial evaluation period for the first award term extension (the date the Contractor assumes full responsibility for the Laboratory through September 30, 2027), the Contractor must have been assessed by the FDO to have achieved a rating of at least a “B+” for both Science and Technology and Management and Operations for the first performance evaluation period and a rating of at least an “A-” for Science and Technology and a rating of at least a “B+” for Management and Operations for each of the second and third performance evaluation periods, and meet the contract performance goals, objectives, standards, or criteria and other contract requirements applicable to earning additional award term, as may be defined in the Performance Evaluation and Measurement Plan (or equivalent document), as determined by the ATDO.
- (2) With respect to all other evaluation periods, the Contractor must have been assessed by the FDO to have achieved an overall rating of at least an “A-” for Science and Technology and an overall rating of at least a “B+” for Management and Operations for each performance evaluation period (except as provided in paragraph (1) above), and meet the contract performance goals, objectives, standards, or criteria and other contract requirements applicable to earning additional award term, as may be defined in the Performance Evaluation and Measurement Plan (or equivalent document), as determined by the ATDO. Provided, however, that the Contractor must also obtain a minimum rating of at least a “B+” for each individual Science and Technology goal and a “B-” for each individual Management and Operations goal.

**(c) Award Term Evaluation and Determination**

- (1) The Government may extend the contract term up to a total of 15 years beyond the five-year base term through implementation of this clause. The total contract term, including the transition period and award term(s), shall not exceed 20 years and three (3) months.
- (2) Evaluation of award term extensions will be conducted annually. The initial evaluation period for the first award term extension will be the first three performance evaluation periods of the contract term. The total award term extension that may be earned for the initial



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

- (3) The ATDO will unilaterally determine if the Contractor: (i) meets eligibility requirements to earn an award term extension; and (ii) has earned additional contract term. This determination will be made annually. After the ATDO determines that the Contractor has earned additional award term and after receipt of any necessary approvals, the Contracting Officer will unilaterally modify the contract to extend the term of the contract.
- (4) If the Contractor fails to either (i) earn the first award term extension, or (ii) earn the award term three (3) times, the Contractor becomes ineligible to earn any additional award term extension(s) under the contract.

**(d) Conditions**

- (1) This section does not confer any other rights to the Contractor other than the right to earn additional contract term as specified herein. Any additional contract term awarded to the Contractor under this section is subject to all of the other terms and conditions of this contract. Should the terms of this section conflict with the terms of any other section or clause under this contract, then this section shall be subordinate.
- (2) The Contractor's earning of an award term extension and the Contractor's right to perform an earned award term extension are subject to:
  - (i) The Government's continuing need for the contract's work;
  - (ii) The availability of funds; and
  - (iii) Bilateral contract modifications that incorporate changes to, or new, DOE policy or contract clauses.
- (3) The Government may make unilateral changes to the Performance Evaluation and Measurement Plan (or equivalent document) prior to the start of an award term evaluation period.
- (4) The Contractor is not entitled to any cancellation charges, termination costs, equitable adjustments, or any other compensation due to the Contractor failing to earn or forfeiting award term.

- (5) A significant failure of Contractor's management controls as defined in the Section I Clause entitled "DEAR 970.5203-1 – Management Controls" or a first degree performance failure as defined in the Section I Clause entitled "DEAR 970.5215-3 – Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts" may result in the forfeiture of up to three (3) years of earned award term. This potential forfeiture is in addition to other remedies provided for in the contract and is unilaterally determined by the ATDO.
- (6) If the ATDO determines that the Contractor has forfeited earned award term as allowed in item (5) above, the Contracting Officer will unilaterally modify the contract term.

**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 is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either --
  - (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order as provided in the Termination clause of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if --
  - (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
  - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided that, if the

Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

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

#### **F.4 STOP WORK AND SHUTDOWN AUTHORITY**

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

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

#### **F.5 PRINCIPAL PLACE OF PERFORMANCE**

The principal place of contract performance is at the site of the Fermi National Accelerator Laboratory, Batavia, Illinois, DuPage and Kane Counties.

## SECTION G

### CONTRACT ADMINISTRATION DATA

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## **G.1 DOE CONTRACTING OFFICER**

For the definition of Contracting Officer see FAR 2.101 – Definitions. The Contracting Officer is the only individual who has the authority on behalf of DOE to take the following actions under the contract:

- (1) assign additional work within the general scope of the contract;
- (2) issue a change as defined in the “Changes” clause of the contract;
- (3) change the cost or price of the contract;
- (4) change any of the terms, conditions, specifications, or services required by the contract;
- (5) accept non-conforming work; or
- (6) waive any requirement of the contract.

## **G.2 DOE CONTRACTING OFFICER’S REPRESENTATIVE(S) (COR)**

Performance of the work under this contract shall be subject to the technical direction of DOE Contracting Officer’s Representative(s) in accordance with Section I Clause entitled “DEAR 952.242-70 – Technical Direction”. Any change in any DOE COR may be made administratively by letter from the Contracting Officer consistent with Section I Clause entitled “DEAR 952.242-70 – Technical Direction”. The COR does not have authority to perform those functions reserved exclusively for the Contracting Officer.

## **G.3 CONTRACT ADMINISTRATION**

The contract will be administered by:

U.S. Department of Energy  
Fermi Site Office  
Kirk Road and Pine Street  
Batavia, IL 60510-5011

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

U.S. Department of Energy  
Office of Chief Counsel – Intellectual Property Law Division

ATTN: DOE Patent Counsel  
9800 South Cass Avenue  
Lemont, IL 60439

Information copies of patent related correspondence should be sent to the Contracting Officer.

## SECTION H

### SPECIAL CONTRACT REQUIREMENTS

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## H.1 LABORATORY FACILITIES

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

- (a) The Government-owned or leased land, buildings, utilities, equipment and other facilities situated at or near the Fermi National Accelerator Laboratory site in DuPage and Kane Counties, Illinois;
- (b) The Government-leased land, buildings, and other facilities situated at the former Homestake Mine in the City of Lead, Lawrence County, South Dakota, leased by the U.S. Department of Energy from the South Dakota Science and Technology Authority under Land Lease No. 8.02.19; and
- (c) Government-owned or leased facilities at such other locations as may be approved by DOE for use under this contract.

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

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

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

- (a) Basic Considerations. Throughout the process of planning, and budget development and approval, the Parties recognize the desirability for close consultation, for advising each other of plans or developments on which subsequent action will be required, and for attempting to reach mutual understanding in advance of the time that action needs to be taken.
- (b) Long-Range Planning. It is the intent of the Parties to develop a five-year strategic outlook for Fermi National Accelerator Laboratory. Development of this document is the strategic planning process by which the Parties, through mutual consultation, reach agreement on the general types and levels of activity which will be conducted at the Laboratory for the designated period. It also serves as a baseline for placement of work at the Laboratory. The contents of the plan should include: Mission Overview, Funding by Source, Human Resources, Core Capabilities, Science Strategies for the Future, Major Initiatives, Infrastructure Plans, Mission Readiness and Strategic Partnership Projects (SPP). The Contractor shall submit an annual Laboratory Plan which provides insight into accomplishments against

this strategic document. The Contractor is expected to contribute to long range planning conducted by the Office of Science.

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

### **H.3 CONTRACTOR ASSURANCE SYSTEM**

- (a) The Contractor shall develop a contractor assurance system that is executed by the Contractor's Board of Directors (or equivalent corporate oversight entity) and implemented throughout the Contractor's organization. This system provides reasonable assurance that the objectives of the contractor management systems are being accomplished and that the systems and controls will be effective and efficient. The contractor assurance system, at a minimum, shall include the following key attributes:
  - (1) A comprehensive description of the assurance system with processes, key activities, and accountabilities clearly identified.
  - (2) A method for verifying/ensuring effective assurance system processes. Third party audits, peer reviews, independent assessments, and external certification (such as VPP and ISO 9001 or ISO 14001) may be used.
  - (3) Timely notification to the Contracting Officer of significant assurance system changes prior to the changes.
  - (4) Rigorous, risk-based, credible self-assessments, and feedback and improvement activities, including utilization of nationally recognized experts, and other independent reviews to assess and improve the Contractor's work process and to carry out independent risk and vulnerability studies.
  - (5) Identification and correction of negative performance/compliance trends before they become significant issues.
  - (6) Integration of the assurance system with other management systems including Integrated Safety Management.
  - (7) Metrics and targets to assess performance, including benchmarking of key functional areas with other DOE contractors, industry and research institutions. Assure development of metrics and targets that result in efficient and cost effective performance.
  - (8) Continuous feedback and performance improvement.

- (9) An implementation plan (if needed) that considers and mitigates risks.
- (10) Timely and appropriate communication to the Contracting Officer, including electronic access, of assurance related information.

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

- (b) The Government may revise its level and/or mix of oversight of this contract when the Contracting Officer determines that the assurance system is or is not operating effectively.

#### **CLAUSE H.4 – DEFENSE AND INDEMNIFICATION OF EMPLOYEES**

- (a) The Parties recognize that, under applicable State law, the Contractor could be required to defend and indemnify its officers and employees from and against civil actions and other claims which arise out of the performance of work under this contract. Except for defense costs made unallowable by law, Section I Clause entitled “DEAR 970.5232-2 – Payments and Advances”, or the Major Fraud Act (41 U.S.C. § 4310), the costs and expenses, including judgments, resulting from the defense and indemnification of employees from and against such civil actions and claims shall be allowable costs under this contract if incurred pursuant to the terms of Section I Clause entitled “DEAR 970.5228-1 – Insurance – Litigation and Claims”.
- (b) Costs and expenses, including judgments, resulting from the defense and indemnification of employees from civil fraud actions filed in federal court by the Government will be unallowable where the employee pleads nolo contendere or the action results in a judgment against the defendant.
- (c) Where in accordance with applicable State law, the Contractor determines it must defend an employee in a criminal action, DOE will consider in good faith, on a case-by-case basis, whether the Contractor has such an obligation. If DOE concurs, the costs and expenses, including judgments, resulting from the defense and indemnification of employees shall be allowable.
- (d) The Contractor shall immediately furnish the Contracting Officer written notice of any such claim or civil action filed against any employee of the Contractor arising out of the work under this contract together with copies of all pleadings filed. The Contractor shall furnish to the Contracting Officer a written determination by the Contractor’s counsel that the defense or indemnity of the employee is required by the provisions of applicable State law, that the employee was acting within the course and scope of employment at the time of the acts or omissions which gave rise to the claim or civil action, and that any exclusions set forth under applicable State law for fraud, corruption, malice, willful misconduct, or lack of good faith on

the part of the employee does not apply. A copy of any letter asserting a reservation of rights under applicable State law with respect to the defense or indemnification of such employee shall also be provided to the Contracting Officer. The costs associated with the settlement of any such claim or civil action shall not be treated as an allowable cost unless approved in writing by the Contracting Officer.

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

Allowable costs under this contract shall be determined according to the requirements of Section I Clause entitled “DEAR 970.5232-2 – Payments and Advances”. For purposes of effective contract implementation, certain items of cost are being specifically identified below as allowable and/or unallowable under this contract to the extent indicated. Regarding the costs being specifically identified below as allowable, to be reimbursable under the contract they still must meet FAR 31.201-2’s five requirements for a cost to be allowable.

(a) ITEMS OF ALLOWABLE COSTS:

- (1) Cost for the defense and indemnification of employees in accordance with the provisions of Section H Clause entitled “Defense and Indemnification of Employees”.
- (2) Rentals and leases of land, buildings, and equipment owned by third parties, allowances in lieu of rental, charges associated therewith and costs of alteration, remodeling and restorations where such items are used in the performance of the contract, except that such rentals and leases directly chargeable to the contract shall be subject to such approval by the Contracting Officer.
- (3) Notwithstanding the provisions of FAR 31.205-44 (e), stipends and payments made to reimburse travel or other expenses of researchers and students who are not employed under this contract but are participating in research, educational or training activities under this contract to the extent such costs are incurred in connection with fellowship, international agreements, or other research, educational or training programs approved by the Contracting Officer.
- (4) Notwithstanding the provisions of FAR 31.205-44 (e), payments to educational institutions for tuition and fees, or institutional allowances, in connection with fellowship or other research, educational or training programs for researchers and students who are not employed under this contract.

- (5) Costs incurred or expenditures made by the Contractor, as directed, approved or ratified by the Contracting Officer and not otherwise unallowable under any other provisions of this contract.
  - (6) Net costs for the Fermilab swimming pool subject to approval by the Contracting Officer.
- (b) ITEMS OF UNALLOWABLE COSTS:
- (1) Premium Pay for wearing radiation-measuring devices for Laboratory and all-tier cost-type subcontract employees.
  - (2) Salaries or other compensation of the Contractor's Board members, or that of members of subcommittees of the Board who are employees of the Contractor, or the equivalent corporate oversight entity/entities.
  - (3) Home office expenses, whether direct or indirect, relating to activities of the Contractor, except as otherwise specifically agreed to elsewhere in this contract or subsequently in writing by the Contracting Officer.
  - (4) Contractor commitments incorporated in this contract as Section J. Appendix D.

#### **CLAUSE H.6 – ADMINISTRATION OF SUBCONTRACTS**

- (a) The administration of all subcontracts entered into and/or managed by the Contractor, including responsibility for payment hereunder, shall remain with the Contractor unless assigned at the direction of DOE.
- (b) The DOE reserves the right to direct the Contractor to assign to the DOE, or another Contractor, any subcontract awarded under this contract.
- (c) The DOE reserves the right to identify specific work activities in Section C entitled "Description/Specifications/Statement of Work" to be removed (de-scoped) from the contract in order to contract directly for the specific work activities. The Department will work with the Contractor to identify the areas of work that can be performed by small businesses in order to maximize direct federal contracts with small businesses. The Contractor agrees to facilitate these actions. This facilitation will include identifying direct contracting opportunities valued at \$5 million or above for small businesses for work presently performed under subcontracts, as well as work performed by contractor employees. The Contractor shall notify the DOE one-year in advance of the expiration of any of its subcontracts valued at \$5 million or above, or if applicable, one-year prior to the exercise of an option and/or the option notification requirement, if any, contained in the subcontracts. The DOE will review

this information and the requirements of the Contractor to determine the appropriateness for small business opportunities. This review may result in the DOE electing to enter in contracts directly with small businesses for these areas of work. The Contracting Officer will give notice to the Contractor not less than 120 calendar days prior to the date for exercising the option and/or the expiration of the subcontract and/or prior to entering into contract for work being performed by contractor employees. Following award of these direct federal contracts, DOE may assign administration of these contracts to the Contractor. The Contractor agrees to accept assignments from the DOE for the administration of these contracts. The parameters of the Contractor's responsibilities for the small business contracts and/or changes, if any, to this contract will be incorporated via a modification to the contract. The Contractor will accept management and administration responsibilities, if so determined.

- (d) To the extent that DOE removes (de-scopes) work from this contract, any such removed or withdrawn work shall be treated as a change in accordance with Section I Clause entitled "DEAR 970.5243-1 – Changes". A "material change" for the purpose of this clause is defined as cumulative changes during a fiscal year that result in a plus or minus 10% change to the Laboratory's budget. To the extent that DOE assigns the administration of a contract to the Contractor, or removes (de-scopes) work, the Parties reserve the right to negotiate an equitable adjustment in the Contractor's annual available performance fee. The negotiation of fee will be in accordance with the Section I Clause entitled "DEAR 970.5215-1 – Total Available Fee: Base Fee Amount and Performance Fee Amount". The Parties will also negotiate appropriate adjustments to the Contractor's Subcontracting Plan or any other applicable contract terms and conditions impacted by such withdrawal or addition of work scope to recognize the changes to the Contractor's subcontracting base and goals.

## **CLAUSE H.7 – PRIVACY ACT RECORDS**

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

- (a) "Personnel Medical Records" (DOE-33) (Excepting Contractor Employees).
- (b) "Personnel Radiation Exposure Records" (DOE-35) respecting Contractor employees, DOE employees, and visitors to the contract site.
- (c) "Employee and Visitor Access Control Records" (DOE-51).
- (d) "Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Contractor Sites" (DOE-52).

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

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

#### **CLAUSE H.8 – ADDITIONAL DEFINITIONS**

- (a) "Contractor" means "the Offeror" as specified in Block 15A of Standard Form 33, Section A entitled "Solicitation, Offer and Award" of the contract.
- (b) The term "DOE" means the Department of Energy, "NNSA" means the National Nuclear Security Administration.
- (c) The term "DOE Directive" means DOE Policies, Orders, Notices, Manuals, Regulations, Technical Standards and related documents, and Guides, including for purposes of this contract those portions of DOE's Accounting and Procedures Handbook applicable to integrated Contractors, issued by DOE. The term does not include temporary written instructions by the Contracting Officer for the purpose of addressing short-term or urgent DOE concerns relating to health, safety, or the environment.
- (d) "Head of Agency" means: (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy; and (iv) the Chairman, Federal Energy Regulatory Commission.
- (e) "Head of Contracting Activity" for the Office of Science means the Deputy Director for Operations.
- (f) "Laboratory" means the Fermi National Accelerator Laboratory (FNAL) composed of Government-owned buildings and facilities together with the necessary utilities, now existing or hereafter to be acquired, constructed and equipped, most of which are or will be situated on a plot or plots of land in Batavia, Kane, and DuPage Counties, Illinois and in Lead, South Dakota.
- (g) The term "someone acting as the Laboratory Director" means the person appointed as Laboratory Director; Deputy Laboratory Director(s) acting in the absence of the Laboratory Director; or a person specified, in writing, to have



authority to act in the absence of the Laboratory Director and Deputy Laboratory Director(s).

- (h) The term “non-profit organization” means:
- (1) a university or other institution of higher education,
  - (2) an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 as amended and exempt from taxation under section 501(a) and the Internal Revenue Code,
  - (3) any nonprofit scientific or educational organization qualified as a nonprofit by the laws of the State of its organization or incorporation, or
  - (4) a combination of qualifying entities organized for a nonprofit purpose (e.g., partnership, joint venture or limited liability company) each member of which meets the requirements of (1), (2), or (3) above.
- (i) The term “Senior Procurement Executive” means for:
- (1) Department of Energy – Director, Office of Acquisition Management; and
  - (2) National Nuclear Security Administration – Associate Administrator for Acquisition and Project Management.

#### **CLAUSE H.9 – SERVICE CONTRACT LABOR STANDARDS (41 U.S.C. 6701)**

The Service Contract Labor Standards are not applicable to this contract. However, in accordance with Section I Clause entitled “DEAR 970.5244-1 – Contractor Purchasing System”, subcontracts awarded by the Contractor are subject to the Service Contract Labor Standards to the same extent and under the same conditions as contracts awarded by DOE. The Contractor and the Contracting Officer shall develop a procedure whereby DOE will determine if the Service Contract Labor Standards are applicable to particular subcontracts. In cases determined to be covered by the Service Contract Labor Standards, the Contractor shall prepare SF-98 and 98A “Notice of Intention to Make a Service Contract” (or documentation considered equivalent by the Contracting Officer) and forward it to the Contracting Officer or his designee to obtain a wage determination.

#### **CLAUSE H.10 – WALSH-HEALEY 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

\$15,000.00 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 6501 et seq.), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect."

#### **CLAUSE H.11 – ALLOWABLE CONTRACTOR GOVERNANCE AND CONTRACT MONITORING EXPENSES**

In furtherance of the cost allowability limitations for the activities of the M&O Contractor's Board of Directors (or equivalent corporate oversight entity), the Contractor shall annually submit, by August 31, a detailed budget estimate for the allowable costs of the Contractor's corporate governance/governing board activities for provisional agreement for which the Contractor's Board of Directors' (or equivalent corporate oversight entity) execution/performance of the requirements of Section H Clause entitled "Contractor Assurance System" (if any) are separately delineated. Costs of the Contractor's corporate governance/governing board, the parent entities, and other costs of parent oversight, including but not limited to salaries/stipends/honoraria, travel (other than travel to the Laboratory), and entertainment are expressly unallowable and shall not be included in the annual budget estimate. Final costs for the Fiscal Year should be submitted by December 31. Costs are subject to review and approval as determined by the Contracting Officer.

Costs incurred pursuant to the provisional agreement must be consistent with those approved under laboratory systems for this contract, including but not limited to the Contractor Assurance System, Financial Management System, and Purchasing Management System, and are subject to review at such times and in such detail as the Contracting Officer, in their sole discretion, determines.

#### **CLAUSE H.12 – MANAGEMENT AND OPERATING (M&O) CONTRACTOR SUBCONTRACT REPORTING (NOV 2017)**

(a) Definitions. As used in this clause—

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

"Management and Operating Contractor Subcontract Reporting Capability (MOSRC)" means a DOE system and associated processes to collect key

information about Management and Operating Contractor first-tier subcontracts for reporting to the Small Business Administration.

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

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

#### **CLAUSE H.13 – FACILITIES CAPITAL COST OF MONEY**

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

#### **CLAUSE H.14 – STANDARDS OF CONTRACTOR PERFORMANCE EVALUATION**

- (a) Use of objective standards of performance, self-assessment and performance evaluation:
  - (1) The Parties agree that the Contractor will utilize a comprehensive performance-based management approach for overall Laboratory management. The performance-based management approach will include the use of goals and objectives, agreed to in advance of each performance evaluation period, as standards against which the Contractor's overall performance of the scientific and technical mission obligations under this contract will be assessed. The performance criteria will be limited in number

and focus on results to drive improved performance and increased effective and efficient management of the Laboratory.

- (2) The Parties agree to utilize the process described within Section J, Appendix B entitled "Performance Evaluation and Measurement Plan" (PEMP) (Appendix B) to evaluate the performance of the Laboratory. The Parties further agree that the evaluation process described in Appendix B will be reviewed annually and modified, if necessary, by agreement of the Parties. If agreement of the Parties cannot be reached, the Contracting Officer has the unilateral right to establish the evaluation process.
- (3) The Parties agree that the Contractor will conduct an ongoing self-assessment process as the principal means of determining its compliance with the contract Statement of Work and performance goals and objectives identified within Appendix B. To assist the DOE in accomplishing the appropriate level of oversight, the Contractor shall work in partnership and cooperation with DOE and other external organization, as appropriate, in the self-assessment process. This work includes, but is not limited to, the development and execution of self-assessments and the utilization of the results for continuous improvement.
- (4) The Contractor shall provide periodic updates, as requested by the DOE, on the performance against the Appendix B. The Contractor shall provide a formal status briefing at mid-year and year-end. Specific due dates and formats for the above-mentioned briefings shall be agreed to by the Laboratory Director and the Fermi Site Office Manager.
- (5) DOE, as a part of its responsibility for oversight, evaluation, and information exchange, shall provide an annual programmatic appraisal and other appraisals, and reviews of the Contractor's performance of authorized work in accordance with the terms and conditions of this contract. The Office of Science, through the Fermi Site Office Manager, has the lead responsibility for oversight of the programs and activities conducted by the Contractor.
- (6) The Contracting Officer shall annually provide a written assessment of the Laboratory's performance to the Contractor, which shall be based upon the process described in Appendix B. The Parties acknowledge that the performance levels achieved against the specific performance objectives and measures shall be the primary, but not sole, criteria for determining the Contractor's final performance evaluation and rating. The Contractor's self-assessment results, to include results of any third party reviews which may have been conducted during the evaluation period, will be considered at all levels to assess and evaluate the Contractor's performance. The Contracting Officer may also consider other relevant information not specifically measured by the objectives and measures established within Appendix B that is deemed to have an impact (either positive or negative) on

the Contractor's performance. Other relevant information that may be used by the Contracting Officer may include, but is not limited to, information gained from peer reviews, operational awareness, outside agency reviews (i.e., Office of Inspector General (OIG), Government Accountability Office (GAO), Defense Contract Audit Agency (DCAA), etc.) conducted throughout the year, annual reviews (if needed), and DOE "for cause" reviews. Contractor success or failure in meeting performance expectations in a management or operating area may affect the level and/or mix of oversight attributed to a particular functional element.

(b) Standards of performance measure review:

- (1) The Parties agree to review the PEMP elements (goals, objectives, notable outcomes, and expected levels of performance) contained in Appendix B annually and to modify them upon the agreement of the Parties; provided, however, that if the Parties cannot reach agreement on all the goals, objectives, notable outcomes, and expected levels of performance for the next period, the Contracting Officer shall have the unilateral right to establish reasonable new goals, objectives, notable outcomes and expected levels of performance and/or to modify and/or delete existing goals, objectives, notable outcomes, and expected levels of performance. It is expected that the goals, objectives, notable outcomes, and expected levels of performance will be modified by the Contractor and the DOE as new areas of emphasis or priorities emerge which the Parties may agree warrant recognition in the performance-based integrated management approach.
- (2) Failure to include an objective or performance indicator in the contract Appendix B does not eliminate the Contractor's obligation to comply with all applicable terms and conditions as set forth elsewhere within the contract.
- (3) In the event the Contracting Officer decides to exercise the rights set forth in paragraphs (a)(2), (a)(6) or (b)(1) above, he/she will notify the Contractor, in writing, of the intended decision 10 days prior to issuance.

(c) DOE Quality Assurance Surveillance Plan:

DOE's Quality Assurance Surveillance Plan (QASP) for evaluating the Contractor's performance under the contract shall consist primarily of the PEMP as called for within the Section I Clause entitled "DEAR 970.5203-1 – Management Controls". The QASP establishes the process DOE shall use to ensure that the Contractor has performed in accordance with the performance standards and expectations and acceptable quality levels for each task, describes how performance will be monitored and measured; describes how the results will be evaluated; and states how the results will affect contract payment.

## **CLAUSE H.15 – CAP ON LIABILITY**

### **(Shall apply if the Contractor is a non-profit organization)**

- (a) The Parties have agreed that the Contractor’s liability, for certain obligations it has assumed under this contract, shall be limited as set forth in paragraph (b) below. These limitations or caps shall only apply to obligations the Contractor has assumed pursuant to the following clauses:
- (1) The Section I Clause entitled “DEAR 970.5245-1 – Property”, paragraph (f)(1)(i)(C);
  - (2) The Section I Clause entitled “DEAR 970.5228-1 – Insurance--Litigation and Claims”, paragraph (f); with respect to prudent business judgment only; and
  - (3) The Section I Clause entitled “DEAR 970.5228-1 – Insurance--Litigation and Claims”, paragraph (g)(2); except for punitive damages resulting from the willful misconduct or lack of good faith on the part of the Contractor’s managerial personnel as defined in the Section I Clause entitled “DEAR 970.5245-1 – Property”.
- (b) Unless otherwise prohibited by law or regulation, the Contractor shall be liable each fiscal year for an amount not-to-exceed 1.25 times the maximum performance fee available for that fiscal year. The annual cap which will apply shall be based on the fiscal year in which the Contractor’s act or failure to act was the proximate cause of the liability assumed by the Contractor. In the event the Contractor’s act or failure to act overlaps more than one (1) fiscal year, the limitation will be the annual limitation for the last fiscal year in which the Contractor’s act or failure to act occurred. If the Contractor’s cumulative obligations for a fiscal year equal the amount of the annual limitation of liability, the Contractor shall have no further responsibility for the costs of the liabilities it has assumed for that fiscal year pursuant to (a)(1) through (3) above.

## **CLAUSE H.16 – NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS**

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

## **CLAUSE H.17 – APPLICATION OF DOE CONTRACTOR REQUIREMENTS DOCUMENTS**

- (a) Performance. The Contractor will perform the work of this contract in accordance with each of the Contractor Requirements Documents (CRDs) appended to this contract as

Section J, Appendix I entitled “DOE Directives / List B”, until such time as the Contracting Officer approves the substitution of an alternative procedure, standard, system of oversight, or assessment mechanism resulting from the process described below.

- (b) Laws and Regulations Excepted. The process described in this clause shall not affect the application of otherwise applicable laws and regulations of the United States, including regulations of the Department of Energy.
- (c) Deviation Processes in Existing Orders. This clause does not preclude the use of deviation processes provided for in existing DOE directives.
- (d) Proposal of Alternative. The Laboratory Director may, at any time during performance of this contract, propose an alternative procedure, standard, system of oversight, or assessment mechanism to the requirements in a listed CRD by submitting to the Contracting Officer a signed proposal describing the nature and scope of the alternative procedure, standard, system of oversight, or assessment mechanism (alternative), the anticipated benefits, including any cost benefits, to be realized by the Contractor in performance under the contract, and a schedule for implementation of the alternate. In addition, the Contractor shall include an assurance signed by the Laboratory Director that the revised alternative is an adequate and efficient means to meet the objectives underlying the CRD. Upon request, the Contractor shall promptly provide the Contracting Officer any additional information that will aid in evaluating the Contractor’s proposal.
- (e) Action of the Contracting Officer. The Contracting Officer shall within 60 days:
  - (1) deny application of the proposed alternative;
  - (2) approve the proposed alternative, with conditions or revisions;
  - (3) approve the proposed alternative; or
  - (4) provide a date by which a decision will be made (not to exceed an additional 60 days).
- (f) Implementation and Evaluation of Performance. Upon approval in accordance with (e)(2) or (e)(3) above, the Contractor shall implement the alternative. In the case of a conditional approval under (e)(2) above, the Contractor shall provide the Contracting Officer with an assurance statement, signed by the Laboratory Director, that the revised alternative is an adequate and efficient means to meet the objectives underlying the CRD. Additionally, the statement shall describe any changes to the schedule for implementation. The Contractor shall then implement the revised alternative. DOE will evaluate performance of the approved alternative from the date scheduled by the Contractor for implementation.

- (g) Application of Additional or Modified CRDs. During performance of the contract, the Contracting Officer may notify the Contractor that he or she intends to unilaterally add CRDs not then listed in Section J, Appendix I entitled “DOE Directives / List B” or modifications to listed CRDs. Upon receipt of that notice, the Contractor, within 30 calendar days, may, in accordance with paragraph (d) of this clause, propose an alternative procedure, standard, system of oversight, or assessment mechanism. The resolution of such a proposal shall be in accordance with the process set out in paragraphs (e) and (f) of this clause. If an alternative proposal is not submitted by the Contractor within the 30 calendar day period, or, if made, is denied by the Contracting Officer under paragraph (e), the Contracting Officer may unilaterally add the CRD or modification to Section J, Appendix I entitled “DOE Directives / List B”. The Contractor and the Contractor Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, resulting from the addition of the CRD or modification.
- (h) Deficiency and Remedial Action. If, during performance of this contract, the Contracting Officer determines that an alternative procedure, standard, system of oversight, or assessment mechanism adopted through the operation of this clause is not satisfactory, the Contracting Officer may, in his or her sole discretion, determine that corrective action is necessary and require the Contractor to prepare a corrective action plan for the Contracting Officer’s approval. If the Contracting Officer is not satisfied with the corrective action taken, the Contracting Officer may direct corrective action to remedy the deficiency, including, if appropriate, the reinstatement of the CRD.

#### **CLAUSE H.18 – EXTERNAL REGULATION**

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

#### **CLAUSE H.19 – SEPARATE ENTITY AND PERFORMANCE GUARANTEE**

- (a) The work performed under this contract shall be conducted by a separate corporate entity from its parent organization(s). The separate corporate entity must be set up solely to perform work at Fermi National Accelerator Laboratory and shall be totally responsible for all contract activities. The separate corporate entity may be formed by a single company or it may be a business structure formed by two or more companies. This separate corporate entity shall be the Contractor.



- (b) The Contractor shall provide a performance guarantee. If the Contractor consists of more than one company, all entities comprising the separate corporate entity shall each provide a performance guarantee for joint and severable liability for the performance of the Contract. Performance guarantee(s) shall be appended to the contract in Section J, Appendix L entitled "Performance Guarantee".
- (c) In the event any of the signatories to the performance guarantee enter into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

## **CLAUSE H.20 – RESPONSIBLE CORPORATE OFFICIAL**

**(To be completed by the Contractor)**

The Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor separate entity performing the contract, and who is accountable for the Contractor regarding Contractor performance issues:

Name:

Position:

Company/Organization:

Address:

Phone Number:

Email Address:

Should the responsible parent corporate official change during the period of the contract, the Contractor shall promptly notify the Contracting Officer in writing of the change.

## **CLAUSE H.21 – EMPLOYEE COMPENSATION: PAY AND BENEFITS (NON-EDUCATIONAL INSTITUTIONS)**

### **(a) Contractor Employee Compensation Plan**

- (1) The Contractor shall submit, for Contracting Officer approval, by (fill-in close of contract transition), a Contractor Employee Compensation Plan (to be submitted during contract transition only) demonstrating how the Contractor will comply with the requirements of this Contract. The Contractor Employee Compensation Plan shall describe the Contractor's policies regarding compensation, pensions and other benefits, and how these policies will support at reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.

- (2) A description of the Contractor Employee Compensation Program should include the following components;
- (A) Philosophy and strategy for all pay delivery programs.
  - (B) System for establishing a job worth hierarchy.
  - (C) Method for relating internal job worth hierarchy to external market.
  - (D) System that links individual and/or group performance to compensation decisions.
  - (E) Method for planning and monitoring the expenditure of funds.
  - (F) Method for ensuring compliance with applicable laws and regulations.
  - (G) System for communicating the programs to employees.
  - (H) System for internal controls and self-assessment.
  - (I) System to ensure that reimbursement of compensation, including stipends, for employees who are on joint appointments with a parent or other organization shall be on a pro-rated basis.

(b) Total Compensation System

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system consistent with FAR 31.205-6 and DEAR 970.3102- 05-6; Compensation for Personal Services. DOE-approved standards (e.g., set forth in an advance understanding or appendix), if any, shall be applied to the Total Compensation System. The Contractor's Total Compensation System shall be fully documented, consistently applied, and acceptable to the Contracting Officer. Periodic appraisals of contractor performance with respect to the Contractors' Total Compensation System will be conducted. Costs incurred in implementing the Total Compensation System shall be consistent with the Contractor's documented Contractor Employee Compensation Plan as approved by the Contracting Officer.

(c) Reports and Information

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

- (1) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments,

and structure movements for each pay structure showing actual against approved amounts and planned distribution of funds for the following year.

- (2) A list of the top five most highly compensated contractor employees and their total cash compensation as defined in FAR 31.205-6(p)(1)(i) at the time of Contract award, and at the time of any subsequent change to their total cash compensation no later than January 15<sup>th</sup> of each year. Section 702 of the Bipartisan Budget Act of 2013 (BBA; Pub. L. 113-67, December 26, 2013) establishes a cap on the reimbursement of compensation costs for contractor employees, adjusted annually to reflect the change in the Employment Cost Index for all workers as calculated by the Bureau of Labor Statistics (BLS).
- (3) An Annual Compensation and Benefits Report no later than March 15<sup>th</sup> of each year.

(d) Pay and Benefit Programs

The Contractor shall establish pay and benefit programs for Incumbent Employees and Non-Incumbent Employees as defined in paragraphs (1) and (2) below; provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.

- (1) Incumbent Employees are the employees who are regular employees of the incumbent Contractor.
  - (A) Pay. Subject to the Workforce Transition Clause, the Contractor shall provide equivalent base pay to Incumbent Employees as compared to pay provided by (fill-in name of the incumbent Contractor) for at least the first year of the term of the Contract.
  - (B) Pension and Other Benefits. The Contractor shall provide a total package of benefits to Incumbent Employees comparable to that provided by [fill-in name of the incumbent Contractor]. Comparability of the total benefit package shall be determined by the Contracting Officer in his/her sole discretion.

Incumbent Employees shall remain in their existing pension plans (or comparable successor plans if continuation of the existing plans is not practicable) pursuant to pension plan eligibility requirements and applicable law.

- (2) Non-Incumbent Employees are new hires, i.e., employees other than Incumbent Employees who are hired by the Contractor after date of award. All Non-Incumbent Employees shall receive a total pay and benefits package

that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with Contract requirements.

(3) Cash Compensation

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

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

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

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

1. The Merit Increase fund does not exceed the mean percent increase included in the annual Departmental guidance providing the WorldatWork Salary Budget Survey's salary increase projected for the CIP year. The Promotion/Adjustment fund does not exceed the mean WorldatWork promotional increases projected for the CIP year and communicated through the annual Department CIP guidance.
2. The budget used for both Merit Increase funds and Promotion/Adjustment funds shall be based on the payroll for the end of the previous CIP year.
3. Salary structure adjustments do not exceed the mean WorldatWork structure adjustments projected for the CIP year and communicated through the annual Department CIP guidance.

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

(iv) If a Contractor does not meet the criteria included in (iii) above, a

CIP must be submitted to the Contracting Officer for an advance determination of cost allowability, unless the Contracting Officer, in accordance with subparagraph(n) obtains an audit of the Contractor's compensation and benefits system and of its incurred costs from either DCAA, or an independent public accounting firm under the DOE contract for such services. Otherwise, the CIP should include the following components and data:

- (1) Market analysis summary, including a comparison of average pay to market average pay.
- (2) Information regarding surveys used for comparison.
- (3) Aging factors used for escalating survey data and supporting information.
- (4) Projection of escalation in the market and supporting information.
- (5) Information to support proposed structure adjustments, if any.
- (6) Analysis to support special adjustments or promotions that exceed the mean WorldatWork promotional increases projected for the CIP year and communicated through the annual Department CIP guidance.
- (7) Funding requests for each pay structure to include breakouts of merit, promotions, variable pay, special adjustments, and structure movement for each Employee Group (i.e., S&E, Administrative, Technical, Exempt/Non-Exempt). (a) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous CIP year. (b) All pay actions granted under the compensation increase plan are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end. (c) Specific payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the Contractor and the Contracting Officer. (d) The Contracting Officer may adjust the CIP amount after approval based on major changes in factors that significantly affect the plan amount (for example, in the event of a major reduction in force or significant ramp-up).

- (8) A discussion of the impact of budget and business constraints on the CIP amount.
  - (9) Comparison of pay to relevant factors other than market average pay.
  - (10) Discussion of recruitment/retention issues (e.g., turnover and hiring) relevant to the proposed increase amounts.
- (v) The Contractor may make, without CO Approval, minor shifts of funds between Merit and Promotion/Adjustment funds after approval of the CIP or if criteria under (d)(3)(A)(iii) was met, in order to meet the compensation requirements of its organization, subject to the following guidelines:
- (1) Minor shift is defined as up to 25% of the specific fund from which funds are being transferred, the contractor may, with CO approval, shift additional funds in justified instances.
  - (2) Contractors will notify the Contracting Officer that funds have been shifted.
- (vi) Individual compensation actions for the top Contractor official (e.g., laboratory director/plant manager or equivalent) and Key Personnel not included in the CIP. For those Key Personnel included in the CIP, DOE will approve salaries upon the initial contract award and when Key Personnel are replaced during the life of the contract. DOE will have access to all individual salary reimbursements. This access is provided for transparency; DOE will not approve individual salary actions (except as previously stated).
- (B) The Contracting Officer's approval of individual compensation actions will be required only for the top Contractor official (e.g., laboratory director/plant manager or equivalent) and Key Personnel as stated in (d)(3)(A)(vi) above. The base salary reimbursement level for the top Contractor official establishes the maximum allowable salary reimbursement under the contract. The contractor shall not be reimbursed for the top contractor official's incentive compensation. The base salary reimbursement level for the top contractor official establishes the maximum allowable salary reimbursement under the contract when compared to subordinate compensation, which would include base salary and any potential incentive compensation under an incentive compensation agreement. Unusual circumstances may require a deviation for an individual on a case-by-case basis. Any such deviations must be approved by the Contracting Officer.
- (C) Severance Pay is not payable to an employee under this Contract if the

employee:

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

(ii) Is offered employment with a successor/replacement Contractor,

(iii) Is offered employment with a parent or affiliated company, or

(iv) Is discharged for cause.

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

(e) Pension and Other Benefit Programs

(1) No presumption of allowability will exist when the Contractor implements a new benefit plan, or makes changes to existing benefit plans, and the Contractor has not provided the Contracting Officer the opportunity to review the allowability of the changes prior to implementation. The Contractor shall submit for prior approval any benefit plan changes not associated with pensions or postretirement benefits that result in increases in costs if the value of the change is \$250,000 or greater. Notification is only necessary for those benefit plan changes (excluding pension and postretirement benefit changes) valued at \$250,000 or less. The Contractor shall submit for prior approval any benefit changes that result in increases to the Department's long-term pension and other actuarial liabilities that are reported in the Department's financial statement regardless of dollar value and increases in other benefits that do not increase the liabilities in the financial statement such as paid time off, insurance and employer contributions for defined contribution pension plans if the value of the change is \$250,000 or greater. Examples of benefits changes that increase the Department's long-term liabilities include defined benefit pension plan changes and postretirement benefits other than pensions. Any changes made by the Contractor shall be in accordance with and pursuant to the terms and conditions of the contract. Advance notification, rather than approval, is required for changes that do not increase costs and are not contrary to Departmental policy or written instruction.

(2) The "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison" are methodologies designed to assist the Contracting Officer in contract administration and oversight. As an alternative to Employee Benefits Cost Survey Comparison, the Contracting Officer may obtain an audit of the Contractor's compensation and benefits system and of its incurred costs from

either DCAA, or from DOE's independent public accounting firm (under contract with DOE), in accordance with subparagraph (n) to assist in determining whether costs are reasonable, allowable, allocable, and in accordance with the terms of the contract.

- (3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (A) and (B) below. The studies shall be used by the Contractor in calculating the cost of benefits under existing benefit plans. An Employee Benefits Value (Ben-Val) Study Method using no less than 15 comparator organizations and an Employee Benefits Cost Survey Comparison method shall be used in this evaluation to establish an appropriate comparison method. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan which increases costs.
  - (A) The Ben-Val, every three years for each benefit tier (e.g., group of employees receiving a benefit package based on date of hire), which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Employees measured against the RV of benefit programs offered by the Contracting Officer approved comparator companies. To the extent that the value studies do not address postretirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the postretirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources
  - (B) An Employee Benefits Cost Study Comparison, annually for each benefit tier that analyzes the Contractor's employee benefits cost for employees as a percent of payroll and compares it with the cost as a percent of payroll, including geographic factor adjustments, reported by the U.S. Department of Labor's Bureau of Labor Statistics or other Contracting Officer approved broad based national survey. Alternatively, in accordance with subparagraph (n) the Contracting Officer may obtain an audit of the Contractor's compensation and benefits system and of its incurred costs from either DCAA or from DOE's independent public accounting firm (under contract with DOE), and not require the submission of an Employee Benefits Cost Study.
- (4) When the net benefit value exceeds the comparator group by more than the percentage threshold established by the Head of the Contracting Activity the Contractor shall submit a corrective action plan to the Contracting Officer for approval, when and if requested in writing by the Contracting Officer.
- (5) When the benefit costs as a percent of payroll exceed the comparator group by more than the percentage threshold established by the Head of the



Contracting Activity, when and if required by the Contracting Officer, the Contractor shall submit an analysis of the specific plan costs that result in or contribute to the percent of payroll exceeding the costs of the comparator group and submit a corrective action plan if directed by the Contracting Officer.

- (6) Within two years, or longer period as agreed to between the Contractor and the Contracting Officer, of the Contracting Officer acceptance of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and the cost as a percent of payroll in accordance with its corrective action plan.
  - (7) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the Contracting Officer in writing.
  - (8) Cost reimbursement for post-retirement benefits other than pensions (PRBs) is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service not less than 5 years under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.
  - (9) Each Contractor sponsoring a defined benefit pension plan and/or postretirement benefit plan will participate in the annual plan management process which includes written responses to a questionnaire regarding plan management, providing forecasted estimates of future reimbursements in connection with the plan(s) and participating in a conference call to discuss the Contractor submission (see (g)(6) below for Pension Management Plan requirements).
  - (10) Each Contractor will respond to quarterly data calls issued through iBenefits, or its successor system.
- (f) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs
- (1) Employees working for the Contractor shall only accrue credit for service under this Contract after the date of Contract award.
  - (2) Except for Commingled Plans in existence as of the effective date of the Contract, any pension plan maintained by the Contractor for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan that provides credit for service not performed under a DOE cost-reimbursement contract. When deemed appropriate by the Contracting Officer, Commingled Plans shall be converted to separate plans at the time of new contract award or the extension of a contract.

(g) Basic Requirements

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

- (1) The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other PRB plans, as applicable, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status of those plans consistent with the requirements of ERISA and the Internal Revenue Code (IRC). The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of Contract performance.
- (2) Each Contractor defined benefit and defined contribution pension plan shall be subjected to a limited-scope audit annually that satisfies the requirements of ERISA section 103, except that every third year the Contractor must conduct a full-scope audit of defined benefit plan(s) satisfying ERISA section 103. Alternatively, the Contractor may conduct a full-scope audit satisfying ERISA section 103 annually. In all cases, the Contractor must submit the audit results to the Contracting Officer. In years in which a limited scope audit is conducted, the Contractor must provide the Contracting Officer with a copy of the qualified trustee or custodian's certification regarding the investment information that provides the basis for the plan sponsor to satisfy reporting requirements under ERISA section 104.

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

- (3) For existing Commingled Plans, the Contractor shall maintain and provide annual separate accounting of DOE liabilities and assets as for a Separate Plan.
- (4) For existing Commingled Plans, the Contractor shall be liable for any shortfall in the plan assets caused by funding or events unrelated to DOE contracts.
- (5) The Contractor shall comply with the requirements of ERISA if applicable to the pension plan and any other applicable laws.
- (6) The Pension Management Plan (PMP) shall include a discussion of the

Contractor's plans for management and administration of all pension plans consistent with the terms of the Contract. The PMP shall be submitted in the iBenefits system, or its successor system no later than January 31<sup>st</sup> of each applicable year. A full description of the necessary reporting will be provided in the annual management plan data request. Within sixty (60) days after the date of the submission, appropriate Contractor representatives shall participate in a conference call to discuss the Contractor's PMP submission and any other current plan issues or concerns.

(h) Reimbursement of Contractors for Contributions to Defined Benefit (DB) Pension Plans

- (1) Contractors that sponsor single employer or multiple employer defined benefit pension plans will be reimbursed for the annual required minimum contributions under the Employee Retirement Income Security Act (ERISA), as amended by the Pension Protection Act (PPA) of 2006 and any other subsequent amendments. Reimbursement above the annual minimum required contribution will require prior approval of the Contracting Officer. Minimum required contribution amounts will take into consideration all pre-funding balances and funding standard carryover balances. Early in the fiscal year but no later than the end of November, the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Department to provide preliminary approval, within 30 days after contractor submission, pending receipt of final estimates, generally after January 1<sup>st</sup> of the calendar year. Final approval of funding will be communicated by the Head of Contracting Activity (HCA) when discount rates are finalized and it is known whether there are any budget issues with the proposed contribution amount.
- (2) Contractors that sponsor multi-employer DB pension plans will be reimbursed for pension contributions in the amounts necessary to ensure that the plans are funded to meet the annual minimum requirement under ERISA, as amended by the PPA. However, reimbursement for pension contributions above the annual minimum contribution required under ERISA, as amended by the PPA, will require prior approval of the Contracting Officer and will be considered on a case-by-case basis. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances. Early in the fiscal year but no later than the end of November, the Contractor requesting above the minimum may submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will

provide the opportunity for the Department to provide preliminary approval, within 30 days after contractor submission, pending receipt of final estimates, generally after January 1<sup>st</sup> of the calendar year. Final approval of funding will be communicated by the HCA when discount rates are finalized and it is known whether there are any budget issues with the proposed contribution amount.

(i) Reporting Requirements for Designated Contracts

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

- (1) Actuarial Valuation Reports. The annual actuarial valuation report for each DOE-reimbursed pension plan and when a pension plan is commingled, the Contractor shall submit separate reports for DOE's portion and the plan total by the due date for filing IRS Form 5500.
- (2) Forms 5300. Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin-off, or merger of a plan submitted to the IRS.

(j) Changes to Pension and PRB Plans

No presumption of allowability will exist when the Contractor makes changes to existing pension plans or PRB plans, and the Contractor has not provided the Contracting Officer the opportunity to review the allowability of the changes prior to implementation. The Contractor shall submit for prior approval changes that result in increases to the Department's long-term pension and PRB liabilities that are reported in the Department's financial statement. Examples of changes that increase the Department's long-term liabilities include defined benefit pension plan changes and PRB plan changes. At least sixty (60) days prior to the adoption of any changes to a pension plan, the Contractor shall submit the information required below, to the Contracting Officer. The Contracting Officer must approve plan changes that increase costs that increase the Department's long-term liabilities as part of a determination as to whether the costs are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

- (1) For proposed changes to pension plans and pension plan funding, the Contractor shall provide the following to the Contracting Officer:
  - (A) a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout;
  - (B) an analysis of the impact of any proposed changes on actuarial

accrued liabilities and costs;

- (C) except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel used by the plan for purposes of compliance with all legal requirements applicable to private sector defined benefit pension plans;
  - (D) the Summary Plan Description; and,
  - (E) any such additional information as requested by the Contracting Officer.
- (2) Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval, as applicable (see (e)(1) above). The justification must:
- (A) demonstrate the effect of the plan changes on the contract net benefit value or percent of payroll benefit costs,
  - (B) provide the dollar estimate of savings or costs, and
  - (C) provide the basis of determining the estimated savings or cost.

(k) Terminating Operations

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

- (1) No further benefits for service shall accrue.
- (2) The Contractor shall provide a determination statement in its settlement proposal, defining and identifying all liabilities and assets attributable to the DOE contract.
- (3) The Contractor shall base its pension liabilities attributable to DOE contract work on the market value of annuities or lump sum payments or dispose of such liabilities through a competitive purchase of annuities or lump sum payouts.
- (4) Assets shall be determined using the “accrual-basis market value” on the date of termination of operations.
- (5) DOE and the Contractor(s) 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 plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those

assets.

(l) Terminating Plans

- (1) DOE Contractors shall not terminate any pension plan (Commingled or site specific) without requesting Departmental approval at least 60 days prior to the scheduled date of plan termination.
- (2) To the extent possible, the Contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market or lump sum payouts. The Contractor shall apply the assumptions and procedures of the Pension Benefit Guaranty Corporation.
- (3) 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.
- (4) If ERISA or IRC rules prevent a full transfer of excess DOE reimbursed assets from the terminated plan, the Contractor shall pay any deficiency directly to DOE according to a schedule of payments to be negotiated by the parties.
- (5) On or before the same day as the Contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.
- (6) DOE liability to a Commingled pension plan shall not exceed that portion which corresponds to DOE contract service. The DOE shall have no other liability to the plan, to the plan sponsor, or to the plan participants.
- (7) After all liabilities of the plan are satisfied, the Contractor shall return to DOE an amount equaling the asset reversion from the plan termination and any earnings which accrue on that amount because of a delay in the payment to DOE. Such amount and such earnings shall be subject to DOE audit. To effect the purposes of this paragraph, DOE and the Contractor may stipulate to a schedule of payments.

(m) Special Programs

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

(n) Alternate Contractor Human Resource Requirements

- (1) Alternatively, the Contracting Officer may obtain an audit of the Contractor's compensation and benefits system and of its incurred costs from either DCAA or from DOE's independent public accounting firm (under contract with DOE); if the Contracting Officer does, the Contractor will not be required to submit the:
  - (A) Compensation Increase Plan; and/or
  - (B) Employee Benefits Cost Study.

(o) Definitions

- (1) Commingled Plans. Cover employees from the Contractor's private operations and its DOE contract work.
- (2) Current Liability. The sum of all plan liabilities to employees and their beneficiaries. Current liability includes only benefits accrued to the date of valuation. This liability is commonly expressed as a present value.
- (3) Defined Benefit Pension Plan. Provides a specific benefit at retirement that is determined pursuant to the formula in the pension plan document.
- (4) Defined Contribution Pension Plan. Provides benefits to each participant based on the amount held in the participant's account. Funds in the account may be comprised of employer contributions, employee contributions, investment returns on behalf of that plan participant and/or other amounts credited to the participant's account.
- (5) Designated Contract. For purposes of this clause, a contract (other than a prime cost reimbursement contract for management and operation of a DOE facility) for which the Head of the Departmental Contracting Activity determines that advance pension understandings are necessary or where there is a continuing Departmental obligation to the pension plan.
- (6) Pension Fund. The portfolio of investments and cash provided by employer and employee contributions and investment returns. A pension fund exists to defray pension plan benefit outlays and (at the option of the plan sponsor) the administrative expenses of the plan.
- (7) Separate Accounting. Account records established and maintained within a commingled plan for assets and liabilities attributable to DOE contract service. NOTE: The assets so represented are not for the exclusive benefit of any one group of plan participants.
- (8) Separate Plan. Must satisfy IRC Sec. 414(l) definition of a single plan,

designate assets for the exclusive benefit of employees under DOE contract, exist under a separate plan document (having its own Department of Labor plan number) that is distinct from corporate plan documents and identify the Contractor as the plan sponsor.

- (9) Spun-off Plan. A new plan which satisfies IRC Reg. 1.414(l)-1 requirements for a single plan and which is created by separating assets and liabilities from a larger original plan. The funding level of each individual participant's benefits shall be no less than before the event, when calculated on a "plan termination basis."

#### **CLAUSE H.22 – POST CONTRACT RESPONSIBILITIES FOR PENSION AND OTHER BENEFIT PLANS**

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



any other clause of this contract, the following actions shall occur regarding the Contractor's obligations regarding the Plans at the time of Contract Completion:

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

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

- (a) The Contractor shall accept, in its own name, service of notices of violations or alleged violations (NOVs/NOAVs) issued by Federal or State regulators to the Contractor resulting from the Contractor's performance of work under this contract, without regard to liability. The allowability of the costs associated with fines and penalties shall be subject to the other provisions of this contract.
- (b) The Contractor shall notify DOE promptly when it receives service from the regulators of NOVs/NOAVs and fines and penalties.

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

- (a) The Parties commit to full cooperation with regard to acquiring any necessary permits or licenses required by environmental, safety and health (ES&H) laws, codes, ordinances, and regulations of the United States, states or territories, municipalities or other political subdivisions, and which are applicable to the performance of work under this contract. It is recognized that certain ES&H permits

will be obtained jointly as co-permittees, and other permits will be obtained by either party as the sole permittee. The Contractor, unless otherwise directed by the Contracting Officer, shall procure all necessary non-ES&H permits or licenses.

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

## **CLAUSE H.25 – WORKERS’ COMPENSATION INSURANCE**

- (a) Contractors, other than those whose workers’ compensation coverage is provided through a state funded arrangement or a corporate benefits program, shall submit to the Contracting Officer for approval all new compensation policies and all initial proposals for self-insurance (contractors shall provide copies to the Contracting Officer of all renewal policies for workers compensation).
- (b) Workers compensation loss income benefit payments, when supplemented by other programs (e.g., salary continuation and/or short-term disability) are to be administered so that total benefit payments from all sources shall not exceed 100 percent of the employee's net pay.
- (c) Contractors approve all workers compensation settlement claims up to \$100,000. Settlement claims above the \$100,000 require Contracting Officer approval.
- (d) The Contractor shall obtain approval from the Contracting Officer before making any significant change to its workers compensation coverage and shall furnish reports as may be required from time to time by the Contracting Officer.

## **CLAUSE H.26 – LABOR RELATIONS**

- (a) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.
- (b) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor’s bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto and shall consult with and obtain the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this Contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or other benefit plans.
- (c) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the

requirements of FAR, Subpart 22.1 and DEAR, Subpart 970.2201 and all applicable Federal and State Labor Relations laws.

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

#### **CLAUSE H.27 – ADDITIONAL LABOR REQUIREMENTS**

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

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

#### **CLAUSE H.28 – CONTRACTOR’S OBLIGATIONS CONCERNING U.S MANUFACTURING REQUIREMENTS OF A DETERMINATION OF EXCEPTIONAL CIRCUMSTANCES (DEC) (APR 2022)**

- (a) Applicability

This clause is applicable to work performed by the Contractor subject to a Determination of Exceptional Circumstance (DEC) under 35 U.S.C. 202(a) (ii) and in accordance with 37 CFR Part 401.3(e) having U.S. manufacturing requirements.

- (b) U.S. Manufacturing Requirements for Subject Inventions

- (1) In addition to the U.S. Preference provision in Patent Rights clause (48 CFR 970.5227-10 including any modifications) and the U.S. Industrial

Competitiveness provision in the Technology Transfer Mission clause (48 CFR 970.5227-3 including any modifications) in the Contractor's prime contract with DOE, the Contractor agrees to comply with the manufacturing requirements of all applicable DEC's, including any remedies for breach of the applicable manufacturing requirements.

- (2) The Contractor is required to comply with requirements of applicable DEC's including, but not limited to, any U.S. Manufacturing Plans or Commercialization Plans. If the Contractor fails to comply with an applicable DEC or any related/required U.S. Manufacturing or Commercialization Plans, the Contractor is subject to any enforcement provisions of the applicable DEC, including, but not limited forfeiture of rights to subject inventions.
- (3) Request for a waiver of any U.S. manufacturing requirements, including the U.S. Preference provision in the Patent Rights clause (48 CFR 970.5227-10 including any modifications), the U.S. Industrial Competitiveness provision in the Technology Transfer Mission clause (48 CFR 970.5227-3 including any modifications), and any applicable U.S. Manufacturing or Commercialization Plan must be approved by the funding program in addition to the Contracting Officer. Such waiver requests must be accompanied by substantial evidence that it is not commercially feasible to comply with the U.S. manufacturing requirement and provide commitments that benefit the U.S. economy. These conditions shall be binding on any subsequent assignee, sublicensee, or any entity acquiring rights to any elected subject inventions.

#### **CLAUSE H.29 – DOE MENTOR-PROTÉGÉ PROGRAM**

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist small businesses, firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. Consistent with the provisions set forth in DEAR 919.70, the Contractor shall mentor at least one (1) active Protégé company at all times during the performance of this contract. Mentor and Protégé firms will develop and submit "lessons learned" evaluations to DOE at the conclusion of the contract.

#### **CLAUSE H.30 – LOBBYING RESTRICTION**

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as

described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

### **CLAUSE H.31 – INTELLECTUAL AND SCIENTIFIC FREEDOM**

- (a) The Parties recognize the importance of fostering an atmosphere at the Laboratory conducive to scientific inquiry and the development of new knowledge and creative and innovative ideas related to national interests.
- (b) The Parties further recognize that the free exchange of ideas among scientists and engineers at the Laboratory and colleagues at universities, colleges, and other laboratories or scientific facilities is vital to the success of scientific, engineering, and technical work performed by Laboratory personnel.
- (c) The Parties also recognize that protecting proprietary and national security interest, information and assets is a paramount concern and duty of the Laboratory and its personnel.
- (d) In order to further the goals of the Laboratory and the national interest, as well as protect proprietary information and national security, it is agreed by the Parties that the scientific and engineering personnel at the Laboratory shall be accorded the rights of publication or other dissemination of research, and participation in open public debate and in scientific, educational, or professional meetings and conferences, subject to limitations included in technology transfer agreements, work for other agreements, and such other limitations as may be required by the terms of this contract. Nothing in this clause is intended to interfere with the obligations of the Parties, including all Laboratory personnel, to protect proprietary, classified, Privacy Act, or other sensitive information as provided for or required by law, regulation, Department of Energy Directive or Order, or elsewhere in this contract.

### **CLAUSE H.32 – CONFERENCE MANAGEMENT (MAR 2023)**

The Contractor agrees that:

- (a) The contractor shall ensure that contractor-sponsored conferences, and contractor participation in DOE conferences sponsored by a Departmental Element, 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 shall ensure its sponsored conferences do not include any activities that create the appearance of taxpayer funds being used in a questionable manner.
- (b) For the purposes of this clause, “conference” is first defined by the Federal Travel Regulation (FTR) as “[a] meeting, retreat, seminar, symposium, or event that

involves attendee travel. The term 'conference' also applies to training activities that are considered to be conferences under 5 C.F.R 410.404." Additionally, the Department's conference activity reporting guideline expands the FTR conference definition to disregard attendee travel as a determining factor, i.e., reporting can be required without the existence of attendee travel.

- (c) Contractor-sponsored conferences include those events that meet the Department's expanded conference definition, and a DOE contractor holds the role of primary decision-maker for key planning items such as conference theme, agenda, location/venue, dates, and conference participation.
- (d) Merely providing the contractor's facility space for a conference, or contractor staff participating in a conference, or procuring conference booth space, giving a speech, or serving as an honorary chairperson does not connote contractor sponsorship.
- (e) The contractor will provide information on conferences they plan to sponsor, when expected costs exceed \$100,000 in net costs to the Department, in the Department's Conference Management Tool (CMT), 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, attendee registration costs
  - 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 and approved by the corresponding federal executive oversight entity.
- (g) For DOE-sponsored conferences (i.e., sponsored by a Departmental Element), the contractor will not expend funds on the proposed conference that exceeds \$100,000 in net estimated DOE cost, until it is approved in the CMT by the management of the Departmental Element sponsoring the conference,
  - 1) DOE-sponsored conferences include events that meet the Department's expanded conference definition, and a Departmental Element holds the role of

primary decision-maker for key planning items such as conference theme, agenda, location/venue, dates and conference participation.

- 2) Merely providing Federal facility space for a conference, or Federal staff participating in a conference, or procuring conference booth space, giving a speech, or serving as an honorary chairperson does not connote DOE sponsorship.
  - 3) The contractor will provide cost and attendance information on their participation in all DOE- sponsored conferences in the DOE Conference Management Tool.
- (h) For conferences sponsored by a non-DOE external entity, the contractor shall develop and implement a process to ensure costs related to such conferences are tracked, allowable, allocable, reasonable, and further the mission of DOE/NNSA.
- (i) Contractors are not required to enter participation or cost information on conferences sponsored by a non- DOE external entity in DOE'S Conference Management Tool.

### **CLAUSE H.33 – INFORMATION TECHNOLOGY ACQUISITIONS**

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

### **CLAUSE H.34 – WORK PROGRAMS**

- (a) Work programs shall be developed by the Contractor and approved by DOE in accordance with applicable DOE directives, and shall constitute work to be performed under this contract during the pertinent periods involved. Such work programs may include program and project performance objectives and milestones. The Contractor shall consult with DOE, as necessary, during the process of developing work programs. Subject to the other provisions of this contract, changes in the agreed work program, not constituting major changes, may be made by the Contractor when it appears to the Contractor, to be in the best interest of the scientific and technical objectives of the agreed work program to do so. It is understood that the nature of the research and development work under this contract is of a specialized character not readily reducible to production schedules. In view of these circumstances, it is agreed that the research and development



work is performed on a best effort basis.

- (b) Due to the critical character of the work from the standpoint of national significance, it is understood by the Parties hereto that very close collaboration will be required between the Contractor and DOE with respect to direction, emphasis, trends and adequacy of the total program.
- (c)
  - (1) The annual work program and budget are principal devices used by DOE in program development, integration, execution, and cost estimating. To make the work program and budget most effective in assuring comprehensive coverage of DOE missions, it is the responsibility of DOE to keep the operators of DOE's laboratories continually advised of DOE's overall program goals, scientific and technological problems, and its current long range objectives. In light of such information, the Contractor will propose possible new objectives and present preliminary work programs in the area of its competence which, from its point of view, will either strengthen the overall DOE program or provide additional support in areas which, in the Contractor's judgment, are being inadequately exploited, or initiate new areas of investigation which appear of potential importance.
  - (2) It is the responsibility of DOE to formulate overall program budgets, taking into consideration the proposals submitted by the Contractor, consistent with funds appropriated by the Congress and all its other program needs.
  - (3) The Contractor shall prepare a final work program and budget consistent with DOE's overall program budget. Upon DOE approval, it is the Contractor's responsibility to conduct its work program within limits established by these approvals unless and until they are modified by DOE.
- (d) In accordance with the basic considerations stated in paragraph (c) above, the Contractor and DOE will utilize the Program Budget procedures on a Government fiscal year basis for the establishment of the Laboratory Program Budget. Procedures for the presentation of work programs and cost estimates shall be jointly developed. In order to meet the requirements of Government budgetary practice, the Parties agree:
  - (1) As early as possible in each calendar year, DOE shall supply the Contractor with the dollar amounts for the Laboratory contained in the President's Budget, with Program assumptions and guidance which the Contractor will be expected to consider in the development of its program and budget, and with all changes to existing budget and accounting policies and procedures to be used in the current budget preparation.
  - (2) Prior to April 1 (or such other date as may be agreed upon) the Contractor shall submit to DOE for approval a comprehensive work program for the next two (2) fiscal years, together with a description of the current work

- program, and the Contractor shall submit a budget estimate for the next two (2) fiscal years, together with a revised budget estimate for the current fiscal year.
- (3) As soon as possible after October 1 of each year, DOE shall issue Work Authorizations and an Approved Funding Program to the Contractor for the current fiscal year.
- (e)
- (1) DOE approved work programs, program performance expectations and milestones as appropriate, and budget estimates shall be reflected in Work Authorizations/Annual Program Letters/Activity Data Sheets/Program Baseline Summaries and Approved Funding Programs. These documents will be issued to the Contractor as soon as possible after funds become available. If, in preparing Work Authorizations/Annual Program Letters/Activity Data Sheets/Program Baseline Summaries and Approved Funding Programs, it is determined that changes are needed in the work program and budget estimates submitted by the Contractor, DOE and the Contractor shall agree upon the changes in the work before final issuance of these documents, provided, however, that nothing herein shall preclude DOE from directing a change in the work pursuant to the Section I Clause entitled "DEAR 970.5243-1 – Changes".
  - (2) The Work Authorizations/Annual Program Letters, and with respect to any work that may be funded by the Office of Environmental Management, Program Baseline Summaries and Approved Funding Programs, specify the funds available for work under the contract for the fiscal year and, in addition, may establish limitations on costs to be incurred for individual portions of the work. The Contractor shall comply with such limitations and shall promptly notify the Contracting Officer, in writing, whenever it becomes apparent that there is likely to be an overrun with respect to any specific limitation in the Work Authorization/Annual Program Letters, and with respect to any work that may be funded by the Office of Environmental Management, Program Baseline Summaries, and Approved Funding Programs. Funds made available for work under the contract, and set forth in Approved Funding Programs or other funding documents, shall not be reduced except by written agreement of the Parties.
  - (3) Additional programs and projects to be conducted at the Laboratory within the scope of the contract may be established by agreement between the DOE and the Contractor.
- (f) A contract modification shall be issued to the Contractor on or before September 30 of each year (or such other date as may be agreed upon) to provide additional funds, and further contract modifications may be issued or entered into from time to time to provide appropriate modifications in the total amount of funds made available under the contract. DOE agrees to use its best efforts to provide stable

funding in support of the contract work and it is DOE's intention that there shall be so provided at all times sufficient funds to support the work program at the level authorized by DOE.

- (g) During the course of the work, DOE shall review the work program and its costs based upon information submitted by the Contractor and may, after consultation with the Contractor, revise the Work Authorizations and Approved Funding Programs established by DOE under paragraph (e) above. The Contractor shall make any necessary revisions to the documents cited in this clause consistent with DOE direction.
- (h) It is the intent of the Contractor and DOE to agree from time to time upon long-term work programs covering certain portions of the work to be performed under this contract.
- (i) The Contractor shall maintain current cost information adequate to reflect the cost of performing the work under this contract at all times while the work is in progress, and shall prepare and furnish to the Government such written estimates of cost and information in support thereof as the Contracting Officer may request.

#### **CLAUSE H.35 – SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT**

If the contractor elects to use a Special Financial Institution Account Agreement, it shall be in accordance with DOE requirements (Financial Management Handbook, Chapter 6) and appended to the contract in Section J, Appendix C entitled “Special Financial Institution Account Agreement”.

#### **CLAUSE H.36 – CONTRACTOR RESOURCES, COMMITMENTS AND AGREEMENTS**

- (a) The resources, commitments and agreements proposed by the Contractor and accepted by the Government are incorporated into the contract as set forth in Section J, Appendix D entitled “Contractor’s Commitments”.
- (b) If the Contractor fails to provide any of the Section J, Appendix D commitments by the date(s) specified, the Government may exercise any of its rights and remedies under the contract, including those contained in the provision of the Section I Clause entitled “DEAR 970.5215-3 – Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts”.
- (c) Any costs incurred by the Contractor in providing any of these resources are expressly unallowable under the contract.

## CLAUSE H.37 – ACTIVITIES DURING CONTRACT TRANSITION

- (a) The Contractor will commence Transition Activities as soon as possible after the award of the contract and complete the following activities (to the extent identified in the Contractor’s proposal) within 90 days after contract award, except as otherwise authorized by the Contracting Officer. It is currently estimated that transition activities will be completed on December 31, 2024. After completion of these activities, and such other Transition Activities as may be authorized by the Contracting Officer, the Contractor shall advise the Contracting Officer that it is ready to assume full responsibility for the Laboratory. Upon receipt of written notification from the Contracting Officer that the Transition Activities are considered complete, the Contractor shall assume full responsibility for the Laboratory, effective 12:01 A.M., the next day.

Activities during transition include, but are not limited to, the following:

- (1) Scientific Research. Complete the activities that will allow the Contractor to assume control of FNAL’s scientific programs and facilities.
- (2) Management Systems. Analyze and initiate enhancements, if needed, to the existing management systems {e.g., Finance, Property, Procurement, Human Resources, Information Management, Life Cycle Asset Management, Integrated Safety Management System (including the Environmental Management System)} to assure system adequacy.
- (3) Assignment of Existing Agreements. Initiate and complete the planning to assume the responsibility for existing regulatory (e.g., environmental permits) and commercial agreements (e.g., subcontracts, purchase orders, etc.) to be assigned to the Contractor by the Incumbent Contractor, or otherwise taken over by the Contractor.
- (4) Joint Reconciliation Property Inventory. Initiate and complete the planning for a joint reconciliation property inventory with the Incumbent Contractor, as stated in Section I Clauses entitled “DEAR 970.5244-1(k) – Contractor Purchasing System” and “DEAR 970.5245-1(i)(2)(ii) – Property”, in accordance with overall guidance provided by the Contracting Officer.
- (5) Litigation Management. Contractor shall consult with the Incumbent Contractor and DOE to determine whether the Contractor should assume some level of management of any litigation resulting from laboratory operations predating the effective date of this contract. The decision should be based on consideration of cost efficiency, named parties and DOE litigation management regulations and guidelines.
- (6) Human Resources

- (A) The Contractor will transition the workforce without break in service as operations cease under Contract No. DE-AC02-07CH11359.
- (B) The Contractor will conduct work force planning, documented in the form of a plan, to be submitted to the Contracting Officer for review and approval at the end of the transition period. The Plan will identify critical-skills necessary to meet mission and contract requirements, provide a gap analysis, and outline the strategy for the recruitment and/or retention of those skills.
- (C) If the Contractor intends to utilize “Joint Appointees”, determine how said “Joint Appointees” will be utilized; terms to be utilized; and a description of the reimbursement process to be negotiated with the appointees’ home organization(s).
- (D) Review applicable collective bargaining agreements and initiate contact with the representatives of the various unions.
- (E) Provide to the Contracting Officer for approval, the Contractor Employee Total Compensation Plan required under the Section H Clause entitled “Employee Compensation: Pay and Benefits”, specifically addressing:
  - (i) The framework for the pension and health/welfare benefits applicable to the transferring workforce, with assessments in the form of a Benefit Value Study and Cost Comparison Survey, as described under the Section H Clause entitled “Employee Compensation: Pay and Benefits”, demonstrating comparability of value and cost relative to the pension and benefits provided by the Incumbent Contractor (Fermi Research Alliance, FRA). Guidance on acceptable Benefit Value and Cost Comparison tools will be provided by the Contracting Officer.
  - (ii) The framework of the total compensation package applicable to new hires under the contract.
- (F) Determine the strategy for meeting the requirements identified in Section H Clause entitled “Employee Compensation: Pay and Benefits” pertaining to pensions.
- (G) If desired, propose an incentive compensation strategy for “Key Personnel,” other management personnel, and other employees, as appropriate.
- (H) Initiate the change in sponsorship of benefit programs, as applicable.

- (l) Initiate analysis of workers' compensation program relative to FNAL liabilities.
- (b) Contractor agrees to perform the activities set forth in paragraph (a) above, including relocation of Contractor's "Key Personnel," as described in its Cost Proposal, at an allowable cost not to exceed \$\_\_\_\_\_ (to be completed by Offeror). The Contractor's transition costs shall be separately accounted for and maintained after the transition period. In the event the actual cost of said activities exceeds such amount, including any costs for relocation of Contractor's "Key Personnel" incurred after the conclusion of the transition period, Contractor agrees that it will be solely responsible for costs greater than said amount.
- (c) If the Contractor determines that it wishes to participate in the Department's Non-Federal Agreements for Commercializing Technology (ACT) program, the Contractor shall prepare and submit to the Contracting Officer its request with implementing procedures as early as possible to ensure continuity of the program.

#### **CLAUSE H.38 – WORKFORCE TRANSITION**

- (a) Hiring Preference. Subject to the availability of funds, the Contractor shall offer employment to all Incumbent Employees in "Regular", "Fixed-Term", or "Temporary" appointments, as defined in (c), below, who, as of the date the Contractor assumes responsibility for the contract, are in good standing and are engaged in performance of work within the scope of work under this contract. Nothing in this paragraph shall preclude the Contractor from separating employees when in its judgment it is appropriate to do so based on the employee's performance or conduct.
- (b) Discretionary Incumbent Management Employees Excepted. It is the Contractor's prerogative to establish its own management structure. Therefore, the hiring preference set forth in paragraph (a) above is not applicable to Discretionary Incumbent Management Employees. Discretionary Incumbent Management Employees are individuals assigned to Key Personnel positions as listed in Contract No. DE-AC02-07CH11359, in Section J, Appendix entitled "Key Personnel" as of the date of release of the RFP, including any subsequent changes of these personnel after release. The Contractor may offer employment to said employees, in either their current positions or other positions, at the Contractor's sole discretion. For those Key Personnel positions listed in Contract No. DE-AC02-07CH11359, any changes in job positions or classifications shall be accompanied by a commensurate alteration in compensation.
- (c) Incumbent Employees.
  - **Regular employees** are not in a temporary status and are regularly scheduled to work.

- **Fixed Term employees** are hired to temporarily work on short- or long-term assignments for a limited duration generally up to a maximum of three years. Term assignments may be continued for one additional extension period.
- **Seasonal employees** are hired to work generally during the summer months or holiday season to supplement the workforce. One type of seasonal employee is an **Intern employee** hired to perform work for a specific internship program, generally during the summer months
- **Temporary employees** are hired to temporarily work for a limited duration generally up to a maximum of six months. One type of temporary employee is a **Co-op employee** hired to work three or four terms at Fermilab, alternating periods of full-time study at their schools with full-time employment at the laboratory.
- **On-call employees** are employed on an “as-needed” basis for a non-specified period. On-call employees must work less than 1,000 hours per year.
- **Full-time employees** are regularly scheduled to work at least 40 hours per week.
- **Part-time employees** are regularly scheduled to work less than 40 hours but at least 20 hours per week.

#### **CLAUSE H.39 – MODIFICATION AUTHORITY**

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

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

#### **CLAUSE H.40 – NO THIRD-PARTY BENEFICIARIES**

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

#### **CLAUSE H.41 – PROHIBITION OF FUNDING FOR CERTAIN NONDISCLOSURE AGREEMENTS**

The Contractor agrees that:

- (a) No cost associated with implementation of enforcement or nondisclosure policies,

forms, or agreements shall be allowable under this contract if such policies, forms, or agreements do not contain the following provisions: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights or liabilities created by existing statute or Executive Order relating to (1) classified information (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this agreement and are controlling."

- (b) The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
- (c) Notwithstanding the provisions of paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or Department of Justice, that are essential to reporting a substantial violation of law.

#### **CLAUSE H.42 – RISK MANAGEMENT AND INSURANCE PROGRAMS**

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

##### **1. Basic Requirements**

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



- b. Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (See DEAR 970.5070, Indemnification, and DEAR 950.70, Nuclear Indemnification of DOE Contractors).
- c. Demonstrate that insurance programs and costs comply with the cost limitations and exclusions at FAR 28.307, Insurance Under Cost Reimbursement Contracts, FAR 31.205-19, Insurance and Indemnification, DEAR 952.231-71 Insurance-Litigation and Claims, and DEAR 970.5228-1, Insurance-Litigation and Claims.
- d. Demonstrate that the insurance program is being conducted in the government's best interest and at reasonable cost.
- e. The contractor shall submit copies of all insurance policies or insurance arrangements to the Contracting Officer no later than 30 days after the purchase date.
- f. When purchasing commercial insurance, the contractor shall use a competitive process to ensure costs are reasonable.
- g. Ensure self-insurance programs include the following elements:
  - (1) Compliance with criteria set forth in FAR 28.308, Self-Insurance. Approval of self-insurance is predicated upon submission of verifiable proof that the self-insurance charge does not exceed the cost of purchased insurance. This includes hybrid plans (i.e., commercially purchased insurance with self-insured retention (SIR) such as large deductible, matching deductible, retrospective rating cash flow plans, and other plans where insurance reserves are under the control of the insured). The SIR components of such plans are self-insurance and are subject to the approval and submission requirements of FAR 28.308, as applicable.
  - (2) Demonstration of full compliance with applicable state and federal regulations and related professional administration necessary for participation in alternative insurance programs.
  - (3) Safeguards to ensure third party claims and claims settlements are processed in accordance with approved procedures.
  - (4) Accounting of self-insurance charges.
  - (5) Accrual of self-insurance reserve. The Contracting Officer's approval is required and predicated upon the following:

- (a) The claims reserve shall be held in a special fund or interest bearing account.
  - (b) Submission of a formal written statement to the Contracting Officer stating that use of the reserve is exclusively for the payment of insurance claims and losses, and that DOE shall receive its equitable share of any excess funds or reserve.
  - (c) Annual accounting and justification as to the reasonableness of the claims reserve submitted for Contracting Officer's review.
  - (d) Claim reserves, not payable within the year the loss occurred, are discounted to present value based on the prevailing Treasury rate.
- h. Separately identify and account for interest cost on a Letter of Credit used to guarantee self-insured retention, as an unallowable cost and omitted from charges to the DOE contract.
  - i. Comply with the Contracting Officer's written direction for ensuring the continuation of insurance coverage and settlement of incurred and/or open claims and payments of premiums owed or owing to the insurer for prior DOE contractors.

## 2. Plan Experience Reporting

The Contractor shall:

- a. Provide the Contracting Officer with annual experience reports for each type of insurance (e.g., automobile and general liability), listing the following for each category:
  - (1) The amount paid for each claim.
  - (2) The amount reserved for each claim.
  - (3) The direct expenses related to each claim.
  - (4) A summary for the year showing total number of claims.
  - (5) A total amount for claims paid.
  - (6) A total amount reserved for claims.
  - (7) The total amount of direct expenses.

- b. Provide the Contracting Officer with an annual report of insurance costs and/or self-insurance charges. When applicable, separately identify total policy expenses (e.g., commissions, premiums, and costs for claims servicing) and major claims during the year, including those expected to become major claims (e.g., those claims valued at \$100,000 or greater).
- c. Provide additional claim financial experience data as may be requested on a case-by-case basis.

3. Terminating Operations

The Contractor shall:

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

4. Successor Contractor or Insurance Policy Cancellation

The Contractor shall:

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

**CLAUSE H.43 – EAct DATA PROTECTION (APR 2022)**

(a) Rights to Protected Data

- (1) In addition to the data rights set forth in 48 CFR § 970.5227-2 - Rights in data-technology transfer, for work authorized under the Energy Policy Act of 2005 (EAct 2005) or the Energy Policy Act of 1992 (EAct 1992), the Contractor may, with the concurrence of DOE, claim and mark as EAct Protected Data, any data first produced in the performance of such work that would have been treated as a trade secret if developed at private expense.

Any such claimed "EPA Act Protected Data" will be clearly marked with the following Protected Rights Notice, and will be treated in accordance with such Notice, subject to the provisions of paragraph (b) of this clause.

### **Protected Rights Notice**

These protected data were produced under **[INSERT WORK IDENTIFIER]** with the U.S. Department of Energy and may not be published, disseminated, or disclosed to others outside the Government until **[INSERT PERIOD OF PROTECTION END]** (Note: The period of protection of such data is fully negotiable, but cannot exceed the applicable statutorily authorized maximum), unless express written authorization is obtained from the Contractor. Upon expiration of the period of protection set forth in this Notice, the Government shall have unlimited rights in this data. This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of notice)

- (2) Any such marked Protected Data may be disclosed under obligations of confidentiality for the following purposes:
  - (i) For evaluation purposes under the restriction that the "Protected Data" be retained in confidence and not be further disclosed; or
  - (ii) To subcontractors or other team members performing work under the Government's program in which this data was produced, for information or use in connection with the work performed under their activity, and under the restriction that the Protected Data be retained in confidence and not be further disclosed.
  
- (3) The obligations of confidentiality and restrictions on publication and dissemination shall end for any Protected Data:
  - (i) At the end of the protected period;
  - (ii) If the data becomes publicly known or available from other sources without a breach of the obligation of confidentiality with respect to the Protected Data;
  - (iii) If the same data is independently developed by someone who did not have access to the Protected Data and such data is made available without obligations of confidentiality; or
  - (iv) If the Contractor disseminates or authorizes another to disseminate such data without obligations of confidentiality.

- (4) However, the Contractor shall not claim or mark as EPACT Protected Data, any lists of data identified by the funding program to be provided with unlimited rights. The Contractor agrees that notwithstanding the lists of types of data, nothing precludes the Government from seeking delivery of additional data in accordance with the requirements of the Contractor's contract, or from making publicly available unlimited rights data, nor does the lists of data constitute any admission by the Government that technical data not on the list is EPACT Protected Data.
  - (5) When a Cooperative Research and Development Agreement (CRADA) is used with an EPAct Awardee, the CRADA Protected Information clause may be modified to incorporate the Protected Rights Notice of this clause. When a Strategic Partnership Project (SPP) is used with an EPAct Awardee, the Rights in Technical Data clause may be modified to incorporate the Protected Rights Notice of this clause.
  - (6) The Government's sole obligation with respect to any EPACT Protected Data shall be as set forth in this clause.
- (b) Unauthorized or Omitted Marking of Data
- (1) Notwithstanding any other provisions concerning inspection or acceptance, if any data developed is authorized by EPAct 1992 or 2005 bears any restrictive or limiting markings not authorized by this clause, the Contracting Officer has the right to remove, cancel, correct, or ignore any markings not authorized by this clause on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond within 60 days or fails to substantiate the propriety of the markings. In either case, DOE will notify the Contractor of the action taken.
  - (2) The Government assumes no liability for the disclosure, use or reproduction of any data provided to the Government by the Contractor that lacks any protected rights notice or other restrictive or limiting markings authorized by the Contractor's prime contract with DOE.

#### **CLAUSE H.44 – REAL PROPERTY ASSET MANAGEMENT**

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

The contractor shall flow down these requirements to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements. 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.

(b) Contractor shall:

- (1) Submit all real estate actions to acquire, utilize, and dispose of real property assets to DOE for review and approval and maintain complete and current real estate records.
- (2) Perform physical condition assessments on each real property asset at least once every five-year period or other risk-based interval as approved by SC-1 based on industry leading practices, voluntary consensus standards, and customary commercial practices.
- (3) Perform functional assessments on each operating real property asset at least once every five-year period or other risk-based interval as approved by SC-1 based on industry leading practices, voluntary consensus standards and customary commercial practices. The outcome of these assessments must identify a list of modifications that the asset needs in order to remain functionally adequate to support the mission as well as the costs to implement those modifications (i.e., Modernization Costs).
- (4) Establish a maintenance management program including: a computerized maintenance management system (CMMS); a condition assessment system; a master equipment list; maintenance service levels; a method to determine for each asset the minimum acceptable level of condition; methods for categorizing deficiencies or repair needs (RN) and Deferred Maintenance and Repair (DM); management of the DM backlog; a method to prioritize maintenance work; and a mechanism to track direct and indirect funded expenditures for maintenance, repair, and renovation at the asset level.
- (5) Maintain Facilities Information Management System (FIMS) data and records for all lands, buildings, trailers, and other structures and facilities. FIMS data must be current and verified annually.

#### **CLAUSE H.45 – DISPOSAL OF REAL PROPERTY**

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

## **CLAUSE H.46 – AGREEMENTS FOR COMMERCIALIZING TECHNOLOGY (AL 2018-06)**

This H-clause authorizes the use of the mechanism: Agreements for Commercializing Technology (ACT). In accordance with the requirements specified in this H-clause, the M&O Contractor may conduct third party-sponsored research at the M&O Contractor's risk. While the Department believes ACT has the potential to greatly assist in the commercialization of technologies, it also specifically recognizes that ACT can be used for other engagements with outside entities that are not necessary aimed at commercialization (e.g., technical assistance, training, studies), but which facilitate access to DOE facilities. In performing ACT work, the M&O Contractor may use staff and other resources associated with this M&O contract for the purposes of conducting technical services (technical services are services that are routinely performed for DOE and multiple sponsors with little to no variance in the scope of work e.g., calibration services), training, studies, performing research and development, and/or furthering the technology transfer mission of the Department, only when such work does not interfere with DOE-funded activities conducted as authorized by other parts of this M&O contract. The resources that may be used include Government-owned or leased facilities, equipment, or other property that is either in the M&O Contractor's custody or available to the M&O Contractor under this M&O contract (unless specifically excluded by the Contracting Officer). For M&O Contractor activities conducted under authority of this H-clause, the M&O Contractor shall provide full-cost recovery, assume indemnification and liability as provided in paragraph 9 below, and may assume other risks normally borne by private parties sponsoring research at the DOE national laboratories and production plants. In exchange for accepting such risks, or for other private consideration provided by the M&O Contractor, the M&O Contractor is authorized to negotiate separate ACT agreements with the sponsoring third parties. Under ACT agreements, the M&O Contractor may charge those parties additional compensation beyond the full costs of the work at the facility.

The following applies to all work conducted under the ACT mechanism regardless of the source of funding:

1. *Authority to Perform Work Under This H-Clause.* Pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.) and other applicable authorities, the M&O Contractor may perform work for non-Federal entities, in accordance with the requirements of this H-clause.
2. *M&O Contractor's Implementation.* For ACT work conducted under the contract, the M&O Contractor must draft, implement, and maintain formal policies, practices, and procedures in accordance with this H-clause, which must be approved by the Contracting Officer, and such approval shall not be unreasonably withheld.
3. *Conditions for Participation in ACT.* The M&O Contractor:

- a. Must not perform ACT activities that would place it in direct competition with the private sector;
- b. May only conduct work under this H-clause if the work does not interfere with or adversely affect projects and programs the M&O Contractor conducts on behalf of the DOE under this contract, and complies with the terms and conditions of the prime contract. If the Government determines that an activity conducted under this H-clause interferes with the Department's work under the M&O contract, or that termination/stay/suspension of work under an ACT agreement is in the best interest of the Government, the M&O Contractor must stop the interfering ACT work immediately to the extent necessary to resolve the interference. At any time, the Contracting Officer may require the use of specified Government-owned or leased property and facilities for the exclusive use of the DOE mission by providing a written notice excluding said property from the M&O Contractor's activities under this H-clause. Any cost incurred as a result of Contracting Officer decisions identified in this subparagraph shall be borne by the M&O Contractor. The Contracting Officer shall provide to the M&O Contractor in writing its decision, identifying the issues and reasons for the decisions. The M&O Contractor shall be provided with a reasonable opportunity to address and resolve the issues identified by the Contracting Officer;
- c. Except as otherwise excluded in this H-clause, must perform all ACT activities in accordance with the standards, policies, and procedures that apply to performance under this M&O contract, including but not limited to environmental, safety and health, security, safeguards and classification procedures, and human and animal research regulations;
- d. Must maintain and provide when requested by the DOE Contracting Officer, a summary of project information for each active ACT project, consisting of: sponsor name; total estimated costs; project title and description; project point of contact; and estimated start and completion dates;
- e. Is responsible for addressing the following items in ACT agreements as appropriate: disposition of property acquired under the agreement; export control; notice of intellectual property infringement; and a statement that the Government and/or the M&O Contractor shall have the right to perform similar services in the Statement of Work for other Parties as otherwise authorized by this M&O contract subject to applicable data restrictions;



- f. Must include a standard legal disclaimer notice on all publications generated under ACT activities. Each DOE M&O Contractor has its own pre-approved publications statement, and this should be included; and
- g. Must insert the following disclaimer in each agreement under ACT, which must be conspicuous (e.g. bold type, all capital letters, or large font) in all Agreements under ACT so as to meet the standards of due notice.

**DISCLAIMER**

THIS AGREEMENT IS SOLELY BETWEEN [INSERT NAME OF THE M&O CONTRACTOR] AND [THE OTHER IDENTIFIED PARTY]. THE UNITED STATES GOVERNMENT IS NOT A PARTY TO THIS AGREEMENT, THIS AGREEMENT DOES NOT CREATE ANY OBLIGATIONS OR LIABILITY ON BEHALF OF THE GOVERNMENT AND THE GOVERNMENT MAKES NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT; THAT THE GOODS, SERVICES, MATERIALS, PRODUCTS, PROCESSES, INFORMATION, OR DATA TO BE FURNISHED HEREUNDER WILL ACCOMPLISH INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; OR THAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS. THE GOVERNMENT SHALL NOT BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO SUCH RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS AGREEMENT. THIS DISCLAIMER DOES NOT AFFECT ANY RIGHTS THE GOVERNMENT MAY HAVE AGAINST THIRD PARTIES ARISING FROM WORK CONDUCTED IN CONNECTION WITH THIS AGREEMENT.

- 4. *Contracting Authority.*
  - a. Subject to DOE approval as described in this paragraph, the M&O Contractor is hereby authorized to negotiate terms and conditions between the M&O Contractor and third parties when entering into ACT agreements. The M&O Contractor will have no authority to bind the Government in any way with such terms and conditions. The

Government will have no obligation to the M&O Contractor due to such terms and conditions.

- b. The M&O Contractor shall submit an ACT proposal package (Package) to the Contracting Officer for approval prior to beginning work under an ACT agreement.
  - i. A complete Package will include at a minimum: the identity of the parties to the ACT agreement; the principal place of performance; any foreign ownership or control of the ACT agreement parties; a Statement of Work; an estimate of costs incurred under the M&O contract; an anticipated schedule; identification of key Government equipment and facilities that will be used under the ACT agreement; a list of expected deliverables; identification of the Intellectual Property (IP) lead and proposed selection of IP rights, as defined in DOE Class Waiver W(C)-2011-013; a signed certification by the private party(ies) that the M&O Contractor offered the option to use CRADA and SPP alternatives (see paragraph 7a) sufficiently such that the private parties are aware of the relative costs and other differences between the ACT agreement and the CRADA and SPP alternatives; source of funds, including a statement that no Federal funds, including pass-through funds received as a subcontractor or partner, are being utilized to fund the agreement except as authorized under the FedACT pilot (see paragraph 14 below); applicable ES&H and NEPA documentation; a statement of consideration, summarizing the risk and/or consideration offered the ACT participants in exchange for charging beyond full cost recovery or for other compensation provided by the participants; and when multiple third parties are parties to the ACT agreement, or as otherwise requested by the Contracting Officer, an IP Management Plan that sets forth the proposed disposition of IP rights, and income and royalty sharing, among the parties to an ACT agreement.
  - ii. If the M&O Contractor, the M&O Contractor's parent, member, subsidiary, or other entity in which the M&O Contractor, the M&O Contractor's parent, member or subsidiary has an equity interest, is a party to the ACT agreement, the M&O Contractor shall include as necessary a project-specific addendum to the Master OCI Plan in the Package to address special circumstances not fully anticipated in the prior approved Master OCI Plan (see paragraph 7).

- iii. If the ACT agreement includes a foreign entity as a party or the statement of work includes the use of human subjects, animal subjects, classified or sensitive subject matter or describes a work scope involving high risks or hazards including environmental issues, the M&O Contractor shall include additional information as necessary or as requested by the Contracting Officer.
- c. The Contracting Officer shall use reasonable best efforts to review each complete Package submitted by the M&O Contractor under subparagraph 4.b. of this H-clause within ten (10) business days of receiving the Package and provide the M&O Contractor with approval or non-approval of the Package. The review of the complete Package by the Contracting Officer shall include a determination that the proposed work: (1) is consistent with or complementary to DOE missions and the contract statement of work; (2) will not adversely impact programs under the contract scope of work; (3) will not place the contractor in direct competition with the domestic private sector; and (4) will not create a detrimental future burden on DOE resources.
- d. Except as conditionally allowed under subparagraph i. below, the Contracting Officer must approve the Package before the M&O Contractor may begin work under the proposed ACT agreement. If the Contracting Officer rejects the Package then the Contracting Officer must provide said rejection to the M&O Contractor in writing including the reasons for the rejection. Upon receipt of the Contracting Officer's written rejection, the M&O Contractor agrees to not further pursue the work described in the package or incur additional costs under the M&O contract for the work described in the Package.
  - i. The M&O Contractor may request a preliminary determination that the proposed scope of work is consistent with the contract statement of work and the Contracting Officer will use his/her best efforts to provide such a determination within three (3) business days. Upon such a determination from the Contracting Officer, the M&O Contractor may begin work under the ACT agreement at the M&O Contractor's risk pending final approval of the complete Package. The M&O Contractor must submit a complete Package, as identified in subparagraph 4.b. above, within (10) business days of the preliminary determination. All costs associated with the performance of work under a preliminary determination are the responsibility of the M&O Contractor, as no Federal funds will be used to fund any work conducted under this H-clause.

- ii. If the M&O Contractor, the M&O Contractor's parent, member, subsidiary, or other entity in which the M&O Contractor, the M&O Contractor's parent, member or subsidiary has an equity interest, is a party sponsoring work in connection with the ACT agreement, work may not commence until approval of the complete Package by the Contracting Officer.
- 5. *Advance Payment for ACT Projects.* The M&O Contractor shall be responsible for providing adequate advance payment for ACT work conducted under this H clause consistent with procedures defined in the Department's Financial Management Handbook. The M&O Contractor shall be solely responsible for collecting payments from third parties for any work conducted under this H clause and such collections shall be independent of providing advance payment. For such payments and for any costs, obligations, or liabilities arising due to the M&O Contractor's work under this H-clause, the M&O Contractor is entirely at risk and the Government shall have no risk.
- 6. *Costs.* All direct costs associated with the M&O Contractor's work conducted under this H-clause shall be directly charged to separate and identifiable accounts in accordance with the requirements of the Department's Financial Management Handbook. An allocable portion of indirect costs normally applied to equivalent work under this M&O contract shall also be applied to work conducted under this H-clause in accordance with the requirements of the Financial Management Handbook. As required by the Financial Management Handbook, changes to the Handbook will be incorporated into this H-clause by a unilateral administrative modification to the contract. In addition, all work must be performed at full costs which would include Federal Administrative Charge (FAC).
  - a. Work conducted under this H-clause shall be excluded from the M&O contract award fee calculations and such fee shall not be allocable to work conducted under this H-clause.
  - b. Federal funds will not be used to fund work conducted under this H-clause except as authorized under the FedACT pilot (see paragraph 14 below).
- 7. *Organizational Conflict of Interest.* The M&O Contractor shall conduct work under this H-clause in a manner that minimizes the appearance of conflicts of interest and avoids or mitigates actual conflicts of interest with the M&O Contractor's functions under this M&O contract. Accordingly, the M&O Contractor shall develop an Organizational Conflict of Interest Mitigation Plan (OCI Plan). The OCI Plan should address OCI issues that arise as a result of the M&O Contractor taking a financial interest in ACT

projects, especially in those cases where the M&O Contractor retains rights in ACT IP. Said OCI Plan shall be provided to the Contracting Officer for review and approval as soon as practicable after execution of the M&O contract modification incorporating this H- clause into the M&O contract. Unless provided otherwise by the Contracting Officer, no work on ACT agreements may commence before Contracting Officer approval of the OCI Plan. In addition to those elements expressly stated in the OCI Plan, the Department may condition any ACT transaction on such other mitigating conditions it determines are appropriate. The OCI Plan shall, at a minimum, include elements that address the following:

- a. *Full Disclosure.* Before work can begin under an ACT transaction, all parties to ACT agreements must sign a DOE-approved certification that they have been fully informed about the availability of SPP agreements and CRADAs in addition to ACT. The certification at a minimum shall briefly describe SPP agreements, CRADAs and ACT, and will include the relative disposition of IP rights and the costs (including identification of any additional costs e.g. insurance, and other compensation to the M&O Contractor under ACT) for each type of agreement for the scope of work being proposed.
- b. *Priority of Work.* The M&O Contractor shall not give work under ACT any special attention or priority over other work under the DOE M&O contract. Work under ACT shall be approved by the Contracting Officer and assigned the same priority relative to other work under the DOE M&O contract that it would normally have if performed under a non-Federal SPP agreement. The Contracting Officer has discretion to determine the agency's priority of work, considering the M&O Contractor's input.
- c. *Participation by Contractor-related Entity:* Where the M&O Contractor, the M&O Contractor's parent, member, subsidiary, or other entity in which the M&O Contractor, the M&O Contractor's parent, member or subsidiary has an equity interest, is a party to the ACT agreement, the M&O Contractor shall include as necessary an addendum to the OCI Plan to address special circumstances not fully anticipated in the OCI Plan.
- d. *Right of Inquiry for ACT IP Designation.* DOE Patent Counsel may inquire into the M&O Contractor's designation of any invention or data as arising under an ACT transaction. The M&O Contractor is responsible for curing any defect identified in such inquiry, and if the M&O Contractor cannot adequately justify the designation or cure the defect, then the parties to the ACT agreement may receive modified rights in the IP to the degree necessary to resolve the issues identified by the inquiry.

8. Intellectual Property. Disposition of intellectual property (IP) arising from work conducted under this H-clause shall be governed by Class Waiver W(C)-2011- 013 (ACT Class Waiver) which is incorporated herein by reference.
  - a. All Contractor ACT inventions shall be reported to DOE pursuant to the requirements of the [cite Patent Rights-M&O contract, Nonprofit Organization or Small Business Firm Contractor] Section I Clause entitled “DEAR 970.5227-10 – Patent Rights – Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor” of this M&O contract.
  - b. In reporting ACT inventions, the M&O Contractor shall identify the ACT agreement under which the invention was made and specify the rights reserved by the Government pursuant to the ACT Class Waiver.
  - c. All technical data identified by the ACT client as Protected ACT Information shall also be marked to identify the ACT agreement under which the data was generated.
  - d. The M&O Contractor shall ensure that all rights and obligations concerning ACT IP, including the appropriate IP provisions authorized in the ACT Class Waiver, are clearly provided in ACT agreements, and that all parties granted any rights-in ACT IP are informed of the terms of the waived rights, including the rights reserved by the Government.
  - e. Where the M&O Contractor receives ownership or license rights to ACT IP, the M&O Contractor may elect to commercialize the ACT IP consistent with the Technology Transfer Mission clause of this M&O contract.
  - f. As an alternative to subparagraph e., if the M&O Contractor has an authorized Private Funded Technology Transfer (PFTT) program, the M&O Contractor may elect to retain private ownership of the ACT IP and commercialize the IP under its applicable PFTT clause, using its private funds, where no costs for developing, patenting, and marketing will be allowable under this M&O contract. The M&O Contractor will share royalties collected on ACT IP with inventors in accordance with paragraph (h) of the Technology Transfer Mission clause of this M&O contract.
  - g. For ACT projects in which the terms of the Agreement provide that the Government reserves the right to use generated data after the

particular project expires, the M&O Contractor must provide to OSTI computer software produced under the Agreement in both source and executable object code format.

- h. Where terms and conditions governing Data and Subject Inventions under this Contract are inconsistent with the terms of the ACT Class Waiver, the ACT Class Waiver will control.

9. Contractor Liability and Indemnification.

a. General Indemnity.

- i. The M&O Contractor agrees to indemnify and hold harmless the Government, the Department, and persons acting on their behalf from all liability, including costs and expenses incurred, to any person, including the ACT participants, for injury to or death of persons or other living things or injury to or destruction of property arising out of the performance of an ACT transaction by the Government, the Department, the M&O Contractor, or persons acting on their behalf, or arising out of the use of the services performed, materials supplied, or information given hereunder by any person including the M&O Contractor, and not directly resulting from the fault or negligence of the Government, the Department, or persons (other than the M&O Contractor) acting on their behalf.
- ii. Subject to Contracting Officer approval, the General Indemnity set forth in (i) above may be modified or waived where: (1) ACT participants are not providing material or equipment to the M&O Contractor to be used in the performance of the Statement of Work under the ACT transaction; and (2) ACT participants are not sending their employees to the M&O facilities as part of the Statement of Work; and (3) the specific activities performed under the ACT transaction are normally performed by the DOE M&O Contractor under the DOE contract.
- iii. Notwithstanding the provisions in a (i) and a (ii) above, the M&O Contractor shall indemnify and hold harmless the Government, the Department, and persons acting on their behalf for loss, damage, or destruction of Government property resulting from the fault or negligence of the M&O Contractor. Such indemnification shall be subject to a liability limit of \$2,000,000 (two million dollars) per year, or such greater liability limit approved by the cognizant DOE/NNSA Contracting Officer under the DOE contract. Above the

applicable liability limit, the M&Q Contractor's responsibility to the Government for such loss, damage or destruction, shall be as set forth in the "Property" clause of this contract.

- b. *Intellectual Property Indemnity.* The M&O Contractor shall indemnify the Government, its agents, and employees against liability, including costs, for infringement of any United States patent, copyright, or other intellectual property arising out of any acts required or directed to be performed under the Statement of Work under an ACT transaction to the extent such acts are not already performed at the M&O contract facilities. Such indemnity shall not apply to a claimed infringement that is settled without the consent of the M&O Contractor unless required by a court of competent jurisdiction.
- c. *Product Liability Indemnity.*
  - i. Except for any liability resulting from any negligent acts or omissions of the Government, the M&O Contractor agrees to indemnify the Government for all damages, costs, and expenses, including attorney's 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 ACT participants or the M&O Contractor, their assignees, or licensees, which was derived from the work performed under ACT transactions. With respect to this H-clause, neither the Government nor the M&O Contractor shall be considered assignees or licensees as a result of reserved Government rights in ACT IP. The indemnity set forth in this paragraph shall apply only if the M&O Contractor shall have been informed as soon and as completely as practical by the Government of the action alleging such claim and shall have been given an opportunity, to the maximum extent afforded by applicable laws, rules, or regulations, to participate in and control its defense, and the Government shall have provided all reasonably available information and reasonable assistance requested by the M&O Contractor. No settlement for which the M&O Contractor would be responsible shall be made without the M&O Contractor's consent, unless required by final decree of a court of competent jurisdiction.
  - ii. Where the M&O Contractor assigns the responsibility for indemnifying the Government under subparagraph c(i) above to other ACT participants, the M&O Contractor agrees to seek such indemnification from the other ACT participants.



- d. *Claims and Liabilities.* Claims and liabilities resulting from the M&O Contractor's performance of work under an ACT transaction authorized pursuant to this H-clause shall not be subject to the M&O contract clause entitled "Insurance - Litigation and Claims." In no event shall the M&O Contractor be reimbursed under the M&O contract for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, and judgment and settlements) incurred as a result of third party claims related to the M&O Contractor's performance under this H-clause.
  - e. *Government Obligations.* The M&O Contractor shall not include any guarantee or requirement that will obligate the Government to pay or incur any costs or create any liability on behalf of the Government in any ACT agreement or commitment. the M&O Contractor executes under authority of this H-clause. The M&O Contractor agrees if the Contractor does include such a guarantee or requirement, it will have no effect on the Government, such that, the M&O Contractor will be responsible for any costs or liability due to such a guarantee or requirement.
  - f. *Insurance.* Any cost of insurance to cover risks of the M&O Contractor associated with ACT agreements is unallowable under this contract.
10. *ACT Records.* All records associated with the M&O Contractor's activities conducted under the authority of this H-clause, with the exception of information required under paragraphs 3e, 4.b.i, and 13 shall be treated as Contractor-owned records under the provisions of the Access to and Ownership of Records clause of this M&O contract. The Government or its designees shall use such records in accordance with applicable Federal laws (including the Privacy Act), as appropriate.
11. *Termination.* The Government or the M&O Contractor may terminate ACT authority under this contract by providing written notification of termination to the other party (Contracting Officer or the M&O Contractor) as appropriate, no less than 60 days prior to the requested termination date. In such cases, the M&O Contractor shall provide DOE a comprehensive list of active ACT projects. DOE anticipates work commitments under these agreements will be completed regardless of termination. All costs associated with early termination of any ACT agreements prior to the completion shall be the responsibility of the M&O Contractor.
12. *Successor M&O Contractor.* To minimize the potential for negative Government programmatic impact and to facilitate seamless transition of work to a successor M&O Contractor, ACT agreement(s) executed under

this H-clause and any contractual instruments associated therewith may be novated to the successor M&O Contractor with the mutual consent of the M&O Contractor, the successor M&O Contractor, and the parties to the affected ACT agreement(s). If the ACT agreement(s) cannot be novated, then the M&O Contractor as a private sponsor shall be permitted to enter into a Non- Federal SPP agreement with the successor M&O Contractor that will enable completion of the statement of work. Such agreements shall be entered into pursuant to DOE SPP policies. DOE shall make good faith efforts to incorporate the terms of the applicable ACT agreement.

13. *Minimum Reporting Requirements.* The M&O Contractor shall maintain records of its activities related to ACT in a manner and to the extent satisfactory to DOE and specifically including, but not limited to the number of ACT agreements, the amount of funds reimbursed to DOE for work under ACT and aggregate funding received beyond costs in the performance of ACT, the number of third party entities engaged through ACT that had not previously sponsored projects under the M&O contract and the number that had not previously sponsored projects under any DOE/NNSA M&O contract, the amount of funds reimbursed to DOE by newly engaged entities, the number of parties and types of entities engaged in each individual ACT agreement, and the number of invention disclosures, licenses and start-ups arising from ACT. The M&O Contractor shall establish performance metric(s) to measure the time required to negotiate ACT agreements in a manner consistent with the time required to negotiate CRADAs and SPPs. The M&O Contractor shall obtain from each entity engaged in ACT the entity's reason(s) for selecting ACT for performance of work under the M&O contract. Also, the M&O Contractor shall report the above identified data annually to the DOE Contracting Officer and in such a format which will serve to adequately inform DOE of the Contractor's activities under ACT while protecting any data not subject to disclosure under this M&O contract. Such records shall be made available in accordance with the clauses of this M&O contract pertaining to inspection, audit and examination of records.
14. *FedACT Pilot.* Under this paragraph the DOE is authorizing a 3-year pilot program for Federally funded ACT (FedACT). FedACT contracts are ACT agreements between the M&O Contractor and a non-Federal third party partner, where a portion of the project funding originates from a Federal agency (i.e., Federal appropriations). In most cases, the industry partner's original source of funds will have been as a result of a contract or financial assistance award from the Federal agency. Any agreement that includes Federal funds must be performed under the FedACT pilot. Federal funds used to support a FedACT project must solely be used to carry out the purposes of the Federal award. FedACT does not include

agreements directly funded from another Federal agency. DOE and the M&O Contractor recognize that FedACT is a new mechanism and subject to modifications as more data and experience are realized. During the FedACT pilot either party may suggest changes to the program based on the experiences gained. Furthermore, the M&O Contractor recognizes that the Department may decide to end the FedACT pilot at any time and that termination of the FedACT pilot by the Department will be in accordance with this paragraph. During the FedACT pilot the M&O Contractor is permitted to negotiate and execute such agreements, subject to DOE approval, as described in paragraph 4 above and as set forth herein. The following additional requirements apply:

- a. The M&O Contractor agrees, prior to executing such agreements, to submit to DOE for approval a modified ACT procedure for implementing the execution of FedACT.
- b. If the M&O Contractor is charging the third party additional compensation beyond the full costs of the work performed under the M&O contract, the ACT agreement will not be approved unless DOE or the M&O Contractor obtains a written certification from the Federal agency funding the third party that such additional compensation using Federal funds is permissible under the Federal award. In order to maximize the transparency of the transaction to the funding agency, the written certification shall be in the form of a standard template approved by DOE. Such template shall include at a minimum:
  - i. The amount of and explanation for the cost difference between performing the work as an ACT agreement as compared with an SPP or CRADA; and
  - ii. A detailed description of the risk and/or consideration offered the participant by the M&O Contractor in exchange for charging beyond full cost recovery. This information shall also be included in the statement of consideration contained in the ACT proposal package submitted to the Contracting Officer.
- c. The M&O Contractor may not agree to any terms and conditions of the Federal award that conflict with this M&O contract.
- d. Notwithstanding any other provision in this H-clause, rights to ACT inventions and copyrights arising from work conducted under this paragraph made by the M&O Contractor shall be governed by the terms of the Patent and Data Rights clauses of this M&O Contract, as

well as any applicable PFTT clause. The ACT Class Waiver does not apply to any ACT agreement funded with Federal funds.

- e. DOE's approval to negotiate and execute a FedACT agreement under this paragraph is for the sole purpose of evaluating and considering the M&O Contractor and DOE's processes and procedures for implementing such FedACT agreements and does not in any way provide the Contractor authority beyond the scope of this paragraph or imply that permanent authority shall be forthcoming.
- f. Advance payment requirements in Section 5 equally apply to FedACT agreements.
- g. All work must be performed at full costs which includes a Federal Administrative Charge (FAC).
- h. Termination. The FedACT Pilot implemented by this H-clause will terminate three years from the date AL 2018-06 is issued [*April 6, 2021*], unless renewed by the Contracting Officer. The Government may provide the M&O Contractor with written notice to terminate the M&O Contractor's authority to conduct FedACT work under this H-clause at any time. If the Contractor's authority to conduct FedACT work under this H-clause has expired or been terminated, the M&O Contractor will be permitted, subject to any other provisions of this H-clause, to complete any FedACT work that had been approved by DOE prior to this H-clause being terminated by the Government.

**PART II – CONTRACT CLAUSES**

## SECTION I

### CONTRACT CLAUSES

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I.55	FAR 52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (FEB 2021) (ALTERNATE I) (JULY 1995)
I.56	FAR 52.223-5	POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (MAY 2011) (ALTERNATE I) (MAY 2011)
I.57	FAR 52.223-7	NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)
I.58	FAR 52.223-9	ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED ITEMS (MAY 2008)
I.59	FAR 52.223-10	WASTE REDUCTION PROGRAM (MAY 2011)
I.60	FAR 52.223-11	OZONE-DEPLETING SUBSTANCES AND HIGH GLOBAL WARMING POTENTIAL HYDROFLUOROCARBONS (JUN 2016)
I.61	FAR 52.223-12	MAINTENANCE, SERVICE, REPAIR, OR DISPOSAL OF REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (JUN 2016)
I.62	FAR 52.223-13	ACQUISITION OF EPEAT-REGISTERED IMAGING EQUIPMENT (JUN 2014)
I.63	FAR 52.223-14	ACQUISITION OF EPEAT-REGISTERED TELEVISIONS (JUN 2014)
I.64	FAR 52.223-15	ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (MAY 2020)
I.65	FAR 52.223-16	ACQUISITION OF EPEAT®-REGISTERED PERSONAL COMPUTER PRODUCTS (OCT 2015)
I.66	FAR 52.223-17	AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND

<b>CLAUSE NO.</b>	<b>FAR/DEAR REFERENCE</b>	<b>TITLE OF CLAUSE</b>
		CONSTRUCTION CONTRACTS (AUG 2018)
I.67	FAR 52.223-18	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (JUN 2020)
I.68	FAR 52.223-19	COMPLIANCE WITH ENVIRONMENTAL MANAGEMENT SYSTEMS (MAY 2011)
I.69	FAR 52.223-20	AEROSOLS (JUNE 2016)
I.70	FAR 52.223-21	FOAMS (JUNE 2016)
I.71	FAR 52.224-1	PRIVACY ACT NOTIFICATION (APR 1984)
I.72	FAR 52.224-2	PRIVACY ACT (APR 1984)
I.73	FAR 52.224-3	PRIVACY TRAINING (JAN 2017)
I.74	FAR 52.225-1	BUY AMERICAN ACT-SUPPLIES (OCT 2022); MODIFIED BY DEAR 970.2570
I.75	FAR 52.225-8	DUTY-FREE ENTRY (OCT 2010)
I.76	FAR 52.225-9	BUY AMERICAN-CONSTRUCTION MATERIALS (OCT 2022)
I.77	FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2021)
I.78	FAR 52.226-1	UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUNE 2000)
I.79	FAR 52.227-23	RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)
I.80	FAR 52.229-8	TAXES-FOREIGN COST-REIMBURSEMENT CONTRACTS (MAR 1990)
I.81	FAR 52.230-2	COST ACCOUNTING STANDARDS (JUN 2020)
I.82	FAR 52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUNE 2010)
I.83	FAR 52.232-17	INTEREST (MAY 2014)
I.84	FAR 52.232-18	AVAILABILITY OF FUNDS (APR 1984)
I.85	FAR 52.232-24	PROHIBITION OF ASSIGNMENT OF CLAIMS (MAY 2014)
I.86	FAR 52.232-39	UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS (JUN 2013)

<b>CLAUSE NO.</b>	<b>FAR/DEAR REFERENCE</b>	<b>TITLE OF CLAUSE</b>
I.87	FAR 52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (MAR 2023)
I.88	FAR 52.233-1	DISPUTES (MAY 2014) (ALTERNATE I) (DEC 1991)
I.89	FAR 52.233-3	PROTEST AFTER AWARD (AUG 1996) (ALTERNATE I) (JUNE 1985)
I.90	FAR 52.233-4	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)
I.91	FAR 52.236-8	OTHER CONTRACTS (APR 1984)
I.92	FAR 52.237-3	CONTINUITY OF SERVICES (JAN 1991)
I.93	FAR 52.242-1	NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)
I.94	FAR 52.242-3	PENALTIES FOR UNALLOWABLE COSTS (DEC 2022) (DEVIATION) (PF 2022-23) (OCT 2021)
I.95	FAR 52.242-4	CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997) (DEVIATION) (PF 2022-23) (OCT 2021)
I.96	FAR 52.242-5	PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (JAN 2017)
I.97	FAR 52.242-13	BANKRUPTCY (JUL 1995)
I.98	FAR 52.244-5	COMPETITION IN SUBCONTRACTING (DEC 1996)
I.99	FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (DEC 2023)
I.100	FAR 52.246-26	REPORTING NONCONFORMING ITEMS (NOV 2021)
I.101	FAR 52.247-1	COMMERCIAL BILL OF LADING NOTATIONS (FEB 2006)
I.102	FAR 52.247-63	PREFERENCE FOR U.S. FLAG AIR CARRIERS (JUN 2003)
I.103	FAR 52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (NOV 2021)
I.104	FAR 52.249-6	TERMINATION (COST-REIMBURSEMENT) (MAY 2004); MODIFIED BY DEAR 970.4905-1 (DEC 2000)
I.105	FAR 52.249-14	EXCUSABLE DELAYS (APR 1984)
I.106	FAR 52.251-1	GOVERNMENT SUPPLY SOURCES (APR 2012) (SC ALTERNATE) (APR 2018)

<b>CLAUSE NO.</b>	<b>FAR/DEAR REFERENCE</b>	<b>TITLE OF CLAUSE</b>
I.107	FAR 52.251-2	INTERAGENCYS FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)
I.108	FAR 52.252-6	AUTHORIZED DEVIATIONS IN CLAUSES (NOV 2020)
I.109	FAR 52.253-1	COMPUTER GENERATED FORMS (JAN 1991)
I.110	DEAR 952.203-70	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)
I.111	DEAR 952.204-2	SECURITY REQUIREMENTS (AUG 2016)
I.112	DEAR 952.204-70	CLASSIFICATION/DECLASSIFICATION (SEP 1997)
I.113	DEAR 952.204-71	SENSITIVE FOREIGN NATIONS CONTROLS (MAR 2011)
I.114	DEAR 952.204-72	DISCLOSURE OF INFORMATION (APR 1994)
I.115	DEAR 952.204-75	PUBLIC AFFAIRS (DEC 2000)
I.116	DEAR 952.204-77	COMPUTER SECURITY (AUG 2006)
I.117	DEAR 952.208-7	TAGGING OF LEASED VEHICLES (APR 1984)
I.118	DEAR 952.209-72	ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009) ALTERNATE I (AUG 2009)
I.119	DEAR 952.211-71	PRIORITIES AND ALLOCATIONS (ATOMIC ENERGY) (APR 2008)
I.120	DEAR 952.215-70	KEY PERSONNEL (DEC 2000)
I.121	DEAR 952.235-71	RESEARCH MISCONDUCT (JUL 2005)
I.122	DEAR 952.242-70	TECHNICAL DIRECTION (DEC 2000)
I.123	DEAR 952.250-70	NUCLEAR HAZARDS INDEMNITY AGREEMENT (AUG 2016)
I.124	DEAR 952.251-70	CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (AUG 2009)
I.125	DEAR 970.5203-1	MANAGEMENT CONTROLS (JUN 2007) (SC ALTERNATE) (APR 2018) (DEVIATION) (PF 2022-23) (OCT 2021)
I.126	DEAR 970.5203-2	PERFORMANCE IMPROVEMENT AND COLLABORATION (MAY 2006)
I.127	DEAR 970.5203-3	CONTRACTOR'S ORGANIZATION (DEC 2000)
I.128	DEAR 970.5204-2	LAWS, REGULATIONS AND DOE DIRECTIVES (DEC

<b>CLAUSE NO.</b>	<b>FAR/DEAR REFERENCE</b>	<b>TITLE OF CLAUSE</b>
		2000) (DEVIATION) (MAY 2018) (SC ALTERNATE) (SEPT 2018)
I.129	DEAR 970.5204-3	ACCESS TO AND OWNERSHIP OF RECORDS (OCT 2014) (DEVIATION: PF 2015-23)
I.130	DEAR 970.5211-1	WORK AUTHORIZATION (MAY 2007)
I.131	DEAR 970.5215-1	TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT (DEC 2000) (ALTERNATES II AND III) (DEC 2000) (DEVIATION)
I.132	DEAR 970.5215-3	CONDITIONAL PAYMENT OF FEE, PROFIT, OR INCENTIVES-FACILITY MANAGEMENT CONTRACTS (AUG 2009)
I.133	DEAR 970.5216-7	ALLOWABLE COST AND PAYMENT (OCT 2021) (DEVIATION) (PF 2022-23) (OCT 2021)
I.134	DEAR 970.5217-1	STRATEGIC PARTNERSHIP PROJECTS PROGRAM (NON-DOE FUNDED WORK) (April 23, 2015)
I.135	DEAR 970.5222-1	COLLECTIVE BARGAINING AGREEMENTS-MANAGEMENT AND OPERATING CONTRACTS (DEC 2000)
I.136	DEAR 970.5222-2	OVERTIME MANAGEMENT (DEC 2000) (SC ALTERNATE) (APR 2018)
I.137	DEAR 970.5223-1	INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)
I.138	DEAR 970.5223-4	WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010)
I.139	DEAR 970.5223-7	SUSTAINABLE ACQUISITION PROGRAM (OCT 2010) (SC ALTERNATE) (SEP 2018)
I.140	DEAR 970.5225-1	COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS (EXPORT CLAUSE) (NOV 2015)
I.141	DEAR 970.5226-1	DIVERSITY PLAN (DEC 2000)
I.142	DEAR 970.5227-2	RIGHTS IN DATA-TECHNOLOGY TRANSFER (DEC 2000) (DEVIATION) (AL 2021-04)
I.143	DEAR 970.5227-3	TECHNOLOGY TRANSFER MISSION (AUG 2002) (DEVIATION) (AL 2022-01)
I.144	DEAR 970.5227-4	AUTHORIZATION AND CONSENT (AUG 2002)

CLAUSE NO.	FAR/DEAR REFERENCE	TITLE OF CLAUSE
		(DEVIATION) (AL 2021-04)
I.145	DEAR 970.5227-5	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2000) (DEVIATION) (AL 2021-04)
I.146	DEAR 970.5227-6	PATENT INDEMNITY-SUBCONTRACTS (DEC 2000)
I.147	DEAR 970.5227-8	REFUND OF ROYALTIES (AUG 2002)
I.148A	DEAR 970.5227-10	<b>This clause is applicable if the selected offeror is a non-profit organization or a small business.</b>
		PATENT RIGHTS-MANAGEMENT AND OPERATING CONTRACTS, NONPROFIT ORGANIZATION OR SMALL BUSINESS FIRM CONTRACTOR (DEC 2000) (DEVIATION) (AL 2022-01)
I.148B	DEAR 970.5227-12	<b>This clause is applicable if the selected offeror is a for-profit organization (other than a small business).</b>
		PATENT RIGHTS – MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, PATENT WAIVER (DEC 2000) (DEVIATION) (AL 2022-01)
I.149	DEAR 970.5228-1	INSURANCE-LITIGATION AND CLAIMS (JUL 2013)
I.150	DEAR 970.5229-1	STATE AND LOCAL TAXES (DEC 2000)
I.151	DEAR 970.5231-4	PREEXISTING CONDITIONS (DEC 2000) (ALTERNATE II) (DEC 2000)
I.152	DEAR 970.5232-1	REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS (DEC 2000)
I.153	DEAR 970.5232-2	PAYMENTS AND ADVANCES (DEC 2000) (ALTERNATE II) (DEC 2000) (PF 2022-23 DEVIATION) (OCT 2021)
I.154	DEAR 970.5232-3	ACCOUNTS, RECORDS AND INSPECTION (DEC 2010) (DEVIATION)(PF 2022-23) (OCT 2021)
I.155	DEAR 970.5232-4	OBLIGATION OF FUNDS (DEC 2000)
I.156	DEAR 970.5232-5	LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (DEC 2000)
I.157	DEAR 970.5232-6	STRATEGIC PARTNERSHIP PROJECT FUNDING AUTHORIZATION (April 23, 2015)
I.158	DEAR 970.5232-7	FINANCIAL MANAGEMENT SYSTEM (DEC 2000)

<b>CLAUSE NO.</b>	<b>FAR/DEAR REFERENCE</b>	<b>TITLE OF CLAUSE</b>
		(DEVIATION) (PF 2022-23) (OCT 2021)
I.159	DEAR 970.5232-8	INTEGRATED ACCOUNTING (DEC 2000) (DEVIATION) (PF 2022-23) (OCT 2021)
I.160	DEAR 970.5235-1	FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER SPONSORING AGREEMENT (DEC 2010)
I.161	DEAR 970.5236-1	GOVERNMENT FACILITY SUBCONTRACT APPROVAL (DEC 2000) (SC ALTERNATE) (APR 2018)
I.162	DEAR 970.5243-1	CHANGES (DEC 2000)
I.163	DEAR 970.5244-1	CONTRACTOR PURCHASING SYSTEM (AUG 2016) (DEVIATION) (PF 2015-17) (MAR 2015) (DEVIATION) (PF 2022-23) (OCT 2021)
I.164A	DEAR 970.5245-1	<b>This clause is applicable if the selected offeror is other than a non-profit organization.</b>
		PROPERTY (AUG 2016)
I.164B	DEAR 970.5245-1	<b>This clause is applicable if the selected offeror is a non-profit organization.</b>
		PROPERTY (AUG 2016) (ALTERNATE I) (AUG 2016)

**SECTION I**

**CONTRACT CLAUSES**

**CLAUSE I.1 - FAR 52.202-1 DEFINITIONS (JUN 2020); MODIFIED BY DEAR 952.202-1**

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

(d) The word or term is defined in FAR part 31, for use in the cost principles and procedures; or

(e) The word or term defines an acquisition-related threshold, and if the threshold is adjusted for inflation as set forth in FAR 1.109(a), then the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment; see FAR 1.109(d).

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

**CLAUSE I.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) above, the Government is entitled:

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than three (3) nor more than ten (10) times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

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

**CLAUSE I.3 - FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES (MAY 2014)**

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

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

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

"Contingent fee", as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has

in securing a Government contract.

"Improper influence", as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

**CLAUSE I.4 - FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUN 2020)**

(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, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

**CLAUSE I.5 - FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUN 2020)**

(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 contract or in connection with a subcontract relating to a prime contract.

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

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

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

*Prime Contractor employee*, as used in this clause, means any officer, partner,

employee, or agent of a prime Contractor.

*Subcontract*, as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

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

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

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

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

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

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

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

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

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

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when

the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c)(5) but excepting paragraph (c)(1) of this clause, in all subcontracts under this contract that exceed the threshold specified in Federal Acquisition Regulation 3.502-2(i) on the date of subcontract award.

**CLAUSE I.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, Restrictions on Obtaining and Disclosing Certain Information, the Government may-

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

(2) Rescind the contract with respect to which-

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

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

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

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

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

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

**CLAUSE I.7 - FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)**

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting

activity or designee determines that there was a violation of 41 U.S.C.2102 or 2103, as implemented in section 3.104 of the Federal Acquisition Regulation.

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

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

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

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

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

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

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

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

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

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the statute by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

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

**CLAUSE I.8 - FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 2020)**

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

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

*Covered Federal action* means any of the following actions:

- (1) Awarding any Federal contract.
- (2) Making any Federal grant.
- (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 paragraph (c)(2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).

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

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

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

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure

Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

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

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

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

(g) *Subcontracts.* (1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract under this contract that exceeds the threshold specified in FAR 3.808 on the date of subcontract award. 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 that exceeds the threshold specified in FAR 3.808 on the date of subcontract award.

**CLAUSE I.9 - FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (NOV 2021)**

(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.

*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 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 product or commercial service 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 the 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) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontract 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 exceed the threshold specified in FAR 3.1004(a) on the date of subcontract award 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.

**CLAUSE I.10 - FAR 52.203-14 DISPLAY OF HOTLINE POSTER(S) (NOV 2021);  
MODIFIED BY DEAR 903.1004**

(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
Hotline Poster	<a href="http://ig.energy.gov/hotline.htm">http://ig.energy.gov/hotline.htm</a>

(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 the threshold specified in

Federal Acquisition Regulation 3.1004(b)(1) on the date of the subcontract award, except when the subcontract--

- (1) Is for the acquisition of a commercial product or commercial service; or
- (2) Is performed entirely outside the United States.

**CLAUSE I.11 - FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS (NOV 2023)**

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies established at 41 U.S.C. 4712 and Federal Acquisition Regulation (FAR) 3.900 through 3.905.

(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 FAR 3.900 through 3.905.

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

**CLAUSE I.12 - 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.

**CLAUSE I.13 - FAR 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON POST CONSUMER 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.

**CLAUSE I.14 - 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 this clause, including this paragraph (d), in all subcontracts when the subcontractor's employees are required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. It shall be the responsibility of the prime Contractor to return such identification to the issuing agency in accordance with the terms set forth in paragraph (b) of this section, unless otherwise approved in writing by the Contracting Officer.

**CLAUSE I.15 - FAR 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUN 2020)**

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

*Executive* means officers, managing partners, or any other employees in management positions.

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

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

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

(1) *Salary and bonus.*

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

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

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

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

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

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c) Nothing in this clause requires the disclosure of classified information

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

(i) In the Contractor's preceding fiscal year, the Contractor received-

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

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

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

(2) *First-tier subcontract information.* Unless otherwise directed by the Contracting Officer, or as provided in paragraph (g) of this clause, by the end of the month following the month of award of a first-tier subcontract valued at or above the threshold specified in FAR 4.1403(a) on the date of subcontract award, the Contractor shall report the following information at <http://www.fsr.gov> for that first-tier subcontract. (The Contractor shall follow the instructions at <http://www.fsr.gov> to report the data.)

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

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

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

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

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

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

- (ix) The prime contract number, and order number if applicable.
- (x) Awarding agency name and code.
- (xi) Funding agency name and code.
- (xii) Government contracting office code.
- (xiii) Treasury account symbol (TAS) as reported in FPDS.
- (xiv) The applicable North American Industry Classification System code (NAICS).

(3) Executive compensation of the first-tier subcontractor. Unless otherwise directed by the Contracting Officer, by the end of the month following the month of award of a first-tier subcontract valued at or above the threshold specified in FAR 4.1403(a) on the date of subcontract award, and annually thereafter (calculated from the prime contract award date), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier subcontractor for the first-tier subcontractor's preceding completed fiscal year at <http://www.fsrs.gov>, if-

(i) In the subcontractor's preceding fiscal year, the subcontractor received-

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

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

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

(e) The Contractor shall not split or break down first-tier subcontract awards to a value below the threshold specified in FAR 4.1403(a), on the date of subcontract award, to avoid the reporting requirements in paragraph (d) of this clause.

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

the performance of the subcontract. The Contractor is not required to make further reports after the first-tier subcontract expires.

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

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

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

**CLAUSE I.16 - FAR 52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (OCT 2018)**

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

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

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

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

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

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

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

“System for Award Management (SAM)” means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized

Government system for certain contracting, grants, and other assistance-related processes. It includes—

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

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

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

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

(b) If the solicitation for this contract contained the provision 52.204-7 with its Alternate I, and the Contractor was unable to register prior to award, the Contractor shall be registered in SAM within 30 days after award or before three days prior to submission of the first invoice, whichever occurs first.

(c) The Contractor shall maintain registration in SAM during contract performance and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement. The Contractor is responsible for the currency, accuracy and completeness of the data within SAM, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in SAM 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 SAM to ensure it is current, accurate and complete. Updating information in SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(d) (1)

(i) If a Contractor has legally changed its business name or “doing business as” 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;

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

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

(ii) If the Contractor fails to comply with the requirements of paragraph (d)(1)(i) of this clause, or fails to perform the agreement at paragraph (d)(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 SAM. Information provided to the Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the EFT clause of this contract.

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

(e) Contractors may obtain additional information on registration and annual confirmation requirements at <https://www.sam.gov>.

**CLAUSE I.17 - FAR 52.204-18 COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE (AUG 2020)**

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

*Commercial and Government Entity (CAGE) code* means—

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

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial



and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

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

(c) Contractors located in the United States or its outlying areas that are not registered in SAM shall submit written change requests to the DLA Commercial and Government Entity (CAGE) Branch. Requests for changes shall be provided at <https://cage.dla.mil>. Change requests to the CAGE master file are accepted from the entity identified by the code.

(d) Contractors located outside the United States and its outlying areas that are not registered in SAM shall contact the appropriate National Codification Bureau (points of contact available at <http://www.nato.int/structur/AC/135/main/links/contacts.htm>) or NSPA at <https://eportal.nspa.nato.int/AC135Public/scage/CageList.aspx> to request CAGE changes.

(e) Additional guidance for maintaining CAGE codes is available at <https://cage.dla.mil>.

(f) If the contract includes Federal Acquisition Regulation clause 52.204-2, Security Requirements, the contractor shall ensure the subcontractors maintain their CAGE code(s) throughout the life of the contract.

**CLAUSE I.18 - FAR 52.204-19 INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS (DEC 2014)**

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

**CLAUSE I.19 - FAR 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (NOV 2021)**

(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 products or commercial services, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

**CLAUSE I.20 - FAR 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB COVERED ENTITIES (DEC 2023)**

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

*Kaspersky Lab covered article* means any hardware, software, or service that—

- (1) Is developed or provided by a Kaspersky Lab covered entity;
- (2) Includes any hardware, software, or service developed or provided in whole or in part by a Kaspersky Lab covered entity; or
- (3) Contains components using any hardware or software developed in whole or in part by a Kaspersky Lab covered entity.

*Kaspersky Lab covered entity* means—

- (1) Kaspersky Lab;
- (2) Any successor entity to Kaspersky Lab, including any change in name, e.g., “Kaspersky”;
- (3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- (4) Any entity of which Kaspersky Lab has a majority ownership.

(b) *Prohibition.* Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use of any Kaspersky Lab covered article. The Contractor is prohibited from—

- (1) Providing any Kaspersky Lab covered article that the Government will use on or after October 1, 2018; and
- (2) Using any Kaspersky Lab covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

(c) *Reporting requirement.*

(1) In the event the Contractor identifies a Kaspersky Lab covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within 3 business days from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a Kaspersky Lab covered article, any reasons that led to the use or submission of the Kaspersky Lab covered article, and any additional efforts that will be incorporated to prevent future use or submission of Kaspersky Lab covered articles.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts including subcontracts for the acquisition of commercial products or commercial services.

**CLAUSE I.21 - FAR 52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021)**

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

*Backhaul* means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

*Covered foreign country* means The People's Republic of China.

*Covered telecommunications equipment or services* means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

*Critical technology* means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or  
(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

*Interconnection arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

*Reasonable inquiry* means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

*Roaming* means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

*Substantial or essential component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.*

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) *Reporting requirement.*

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is

notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

**CLAUSE I.22 - FAR 52.204-27 PROHIBITION ON A BYTEDANCE COVERED APPLICATION (JUN 2023)**

(a) Definitions. As used in this clause—

Covered application means the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited.

Information technology, as defined in 40 U.S.C. 11101(6)—



(1) Means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use—

(i) Of that equipment; or

(ii) Of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(2) Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but

(3) Does not include any equipment acquired by a Federal contractor incidental to a Federal contract.

(b) Prohibition. Section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget (OMB) Memorandum M-23-13, dated February 27, 2023, “No TikTok on Government Devices” Implementation Guidance, collectively prohibit the presence or use of a covered application on executive agency information technology, including certain equipment used by Federal contractors. The Contractor is prohibited from having or using a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the Contractor under this contract, including equipment provided by the Contractor’s employees; however, this prohibition does not apply if the Contracting Officer provides written notification to the Contractor that an exception has been granted in accordance with OMB Memorandum M-23-13.

(c) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for the acquisition of commercial products or commercial services.

**CLAUSE I.23 - FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (NOV 2021)**

(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 product (as defined in paragraph (1) of the definition of "commercial product" in Federal Acquisition Regulation (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 the threshold specified in FAR 9.405-2(b) on the date of subcontract award, 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 the threshold specified in FAR 9.405-2(b) on the date of subcontract award, 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 products or commercial services, 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) Exceeds the threshold specified in FAR 9.405-2(b) on the date of subcontract award; and

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

**CLAUSE I.24 - FAR 52.209-9 UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS (OCT 2018)**

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

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

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

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

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

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

(i) Past performance reviews required by subpart 42.15;

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

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

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

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

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

(3) As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

(d) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

**CLAUSE I.25 - FAR 52.209-10 PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS (NOV 2015)**

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

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

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

- (1) Directly by a parent corporation; or
- (2) Through another subsidiary of a parent corporation.

(b) If the contractor reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this contract, the Government may be prohibited from paying for Contractor activities performed after the date when it becomes an inverted domestic corporation or subsidiary. The Government may seek any available remedies in the

event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

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

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

**CLAUSE I.26 - FAR 52.210-1 MARKET RESEARCH (NOV 2021)**

(a) Definition. As used in this clause—

Commercial product, commercial service, and nondevelopmental item have the meaning contained in Federal Acquisition Regulation (FAR) 2.101.

(b) Before awarding subcontracts for other than commercial acquisitions, where the subcontracts are over the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, the Contractor shall conduct market research to—

(1) Determine if commercial products, commercial services, or, to the extent commercial products suitable to meet the agency's needs are not available, nondevelopmental items are available that—

(i) Meet the agency's requirements;

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

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

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

**CLAUSE I.27 - 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.

**CLAUSE I.28 - 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.

**CLAUSE I.29 - FAR 52.215-12 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (JUN 2020)**

(a) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) 15.403-4(a)(1), 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 in FAR 15.403-4(a)(1), 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 15.403-1(b) applies. If the threshold for submission of certified cost or pricing data specified in FAR 15.403-4(a)(1) is adjusted for inflation as set forth in FAR 1.109(a), then pursuant to FAR 1.109(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment.

(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, when entered into, exceeds the threshold for submission of certified cost or pricing data in FAR 15.403-4(a)(1), the Contractor shall insert either—

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

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

**CLAUSE I.30 - FAR 52.215-13 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA-MODIFICATIONS (JUN 2020)**

(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 in Federal Acquisition Regulation (FAR) 15.403-4(a)(1) on the date of execution of the modification; 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 in FAR 15.403-4(a)(1), 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 in FAR 15.403-4(a)(1), 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(b) applies. If the threshold for submission of certified cost or pricing data specified in FAR 15.403-4(a)(1) is adjusted for inflation as set forth in FAR 1.109(a), then pursuant to FAR 1.109(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment.

(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 in FAR 15.403-4(a)(1) on the date of agreement on price or the date of award, whichever is later.

**CLAUSE I.31 - FAR 52.215-14 INTEGRITY OF UNIT PRICES (NOV 2021)**

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



cost or pricing data not otherwise required by law or regulation.

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

(c) The Contractor shall insert the substance of this clause, less paragraph (b) of this clause, in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold, as defined in Federal Acquisition Regulation (FAR) 2.101 on the date of subcontract award; construction or architect-engineer services under FAR part 36; utility services under FAR part 41; services where supplies are not required; commercial products and commercial services; and petroleum products.

**CLAUSE I.32 - 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 amount of the adjustment 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 the 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 certified 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).

**CLAUSE I.33 - 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.

**CLAUSE I.34 - FAR 52.215-23 LIMITATIONS ON PASS-THROUGH CHARGES (JUN 2020)**

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

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

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

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

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

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

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

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

(1) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of work to be performed under the

contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

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

(d) *Recovery of excessive pass-through charges.* If the Contracting Officer determines that excessive pass-through charges exist;

(1) For other than fixed-price contracts, the excessive pass-through charges are unallowable in accordance with the provisions in FAR subpart 31.2; and

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

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

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

(f) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (f), in all cost-reimbursement subcontracts under this contract that exceed the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, except if the contract is with DoD, then insert in all cost-reimbursement subcontracts and fixed-price subcontracts, except those identified in FAR 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in FAR 15.403-4 on the date of subcontract award.

**CLAUSE I.35 - FAR 52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (OCT 2022)**

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

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

(ii) Otherwise successful offers from small business concerns.

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

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

(b) *Waiver of evaluation preference.* A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes.

Offeror elects to waive the evaluation preference.

(c) *Joint venture.* A HUBZone joint venture agrees that, in the performance of the contract, at least 40 percent of the aggregate work performed by the joint venture shall be completed by the HUBZone small business parties to the joint venture. Work performed by the HUBZone small business parties to the joint venture must be more than administrative functions.

**CLAUSE I.36 - FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (SEP 2023)**

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

*HUBZone small business concern* means a small business concern that meets the requirements described in 13 CFR 126.200, certified by the Small Business Administration (SBA) and designated by SBA as a HUBZone small business concern in the Dynamic Small Business Search (DSBS) and SAM.

*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 concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation and qualified as a small business under the criteria and size standards in 13 CFR part 121, including the size standard that corresponds to the NAICS code assigned to the contract or subcontract.

*Small disadvantaged business concern*, consistent with 13 CFR 124.1001, means a small business concern under the size standard applicable to the acquisition, that-

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by-

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding the threshold at 13 CFR 124.104(c)(2) 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) (1) A joint venture qualifies as a small business concern if—

(i) Each party to the joint venture qualifies as small under the size standard for the solicitation; or

(ii) The protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under a SBA mentor-protégé program.

(2) A joint venture qualifies as—

(i) A service-disabled veteran-owned small business concern if it complies with the requirements in 13 CFR part 125; or

(ii) A HUBZone small business concern if it complies with the requirements in 13 CFR 126.616(a) through (c).

(d) 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.

(e) (1) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(2) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if—

(i) The subcontractor is registered in SAM; and

(ii) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(3) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(4) In accordance with 13 CFR 121.411, 126.900, 127.700, and 128.600, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing SAM or by accessing DSBS at [https://web.sba.gov/pro-net/search/dsp\\_dsbs.cfm](https://web.sba.gov/pro-net/search/dsp_dsbs.cfm). If the subcontractor is a joint venture, the Contractor shall confirm that at least one party to the joint venture is certified by SBA as a HUBZone small business concern. The Contractor may confirm the representation by accessing SAM.

**CLAUSE I.37 - FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (SEP 2023)**

(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 plan* means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial products and commercial services sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

*Commercial product* means a product that satisfies the definition of “commercial product” in Federal Acquisition Regulation (FAR) 2.101.

*Commercial service* means a service that satisfies the definition of “commercial service” in FAR 2.101.

*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. 1601 et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

*Individual subcontracting plan* means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

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

*Reduced payment* means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.

*Subcontract* means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

*Total contract dollars* means the final anticipated dollar value, including the dollar value of all options.

*Untimely payment* means a payment to a subcontractor that is more than 90 days past due under the terms and conditions of a subcontract for supplies and services for which the Government has paid the prime contractor.

(c) (1) The Offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses



subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the Offeror is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The subcontracting plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the Offeror ineligible for award of a contract.

(2) (i) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if—

(A) The subcontractor is registered in SAM; and

(B) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(iii) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(iv) In accordance with 13 CFR 121.411, 126.900, 127.700, and 128.600 a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(d) The Offeror's subcontracting plan shall include the following:

(1) Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in

terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe; and

(ii) Where one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate Contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual subcontracting plan; or the Offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts, including all indirect costs except as described in paragraph (g) of this clause, to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to-

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, SAM, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the Offeror who will administer the Offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the Offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the Offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Offeror will—

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the Offeror with the subcontracting plan;
- (iii) After November 30, 2017, include subcontracting data for each order when reporting subcontracting achievements for indefinite-delivery, indefinite-quantity *contracts with* individual subcontracting plans *where the contract is intended* for use by multiple agencies;

(iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(vi) Provide its prime contract number, its unique entity identifier, 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

(vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own unique entity identifier, 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 the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, indicating-

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact-

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, service-disabled veteran-owned, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through-

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business

size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(12) Assurances that the Offeror will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal. Responding to a request for a quote does not constitute use in preparing a bid or proposal. The Offeror used a small business concern in preparing the bid or proposal if—

(i) The Offeror identifies the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Offeror used the small business concern's pricing or cost information or technical expertise in preparing the bid or proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the Offeror is awarded the contract.

(13) Assurances that the Contractor will provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (d)(12) of this clause. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

(14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment to or utilization of a subcontractor.

(15) Assurances that the offeror will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the contracting officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see 52.242-5).

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable

effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing SAM or by accessing the Dynamic Small Business Search (DSBS) at [https://web.sba.gov/pro-net/search/dsp\\_dsbs.cfm](https://web.sba.gov/pro-net/search/dsp_dsbs.cfm).

(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, as defined in FAR 2.101 on the date of subcontract award, in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, prior to award of the subcontract the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror and if the successful subcontract offeror is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concern.

(7) Assign each subcontract the NAICS code and corresponding size standard that best describes the principal purpose of the subcontract.

(f) A master subcontracting plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Offeror by this clause; provided-

(1) The master subcontracting plan has been approved;



(2) The Offeror ensures that the master subcontracting plan is updated as necessary and provides copies of the approved master subcontracting plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master subcontracting plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial products and commercial services. 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 product or commercial service. 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. A Contractor authorized to use a commercial subcontracting plan shall include in its subcontracting goals and in its SSR all indirect costs, with the exception of those such as the following: Employee salaries and benefits; payments for petty cash; depreciation; interest; income taxes; property taxes; lease payments; bank fees; fines, claims, and dues; original equipment manufacturer relationships during warranty periods (negotiated up front with the product); utilities and other services purchased from a municipality or an entity solely authorized by the municipality to provide those services in a particular geographical region; and philanthropic contributions. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one subcontracting plan. When a contract modification exceeds the subcontracting plan threshold in FAR 19.702(a), or an option is exercised, the goals of the existing subcontracting plan shall be amended to reflect any new subcontracting opportunities. When the goals in a subcontracting plan are amended, these goal changes do not apply retroactively.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Products and Commercial Services, or when the subcontractor provides a commercial product or commercial service subject to the clause at FAR 52.244-6, Subcontracts for Commercial Products and Commercial Services, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small Business Concerns;" or (2) an approved plan required by this clause, shall be a material breach of the contract and may be considered in any past performance evaluation of the Contractor.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor are not included in these reports. Subcontract awards by affiliates shall be treated as subcontract awards by the Contractor. Subcontract award data reported by the Contractor and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontracting plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period. When the Contracting Officer rejects an *ISR*, the Contractor shall submit a corrected report within 30 days of receiving the notice of *ISR* rejection.

(ii) (A) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(B) If a subcontracting plan has been added to the contract pursuant to 19.702 a)(1)(iii) or 19.301-2(e), the Contractor's achievements must be reported in the *ISR* on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

(iii) When a subcontracting plan includes indirect costs in the goals, these costs must be included in this report.

(iv) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) SSR. (i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with an executive agency, regardless of the dollar value of the subcontracts. This report also includes indirect costs on a prorated basis when the indirect costs are excluded from the subcontracting goals.

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If the Contractor or a subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over the applicable threshold specified in FAR 19.702(a), and the contractand contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime contractors.

(D) The report shall be submitted annually by October 30 for the twelve month period ending September 30. When a Contracting Officer rejects an SSR, the Contractor shall submit a revised report within 30 days of receiving the notice of SSR rejection.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) *Reports submitted under a commercial plan-*

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year and all indirect costs.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

**CLAUSE I.38 - FAR 52.219-16 LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (SEP 2021)**

(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 (see 19.705-7), established in accordance with the clause in this contract entitled, "Small Business Subcontracting Plan", the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

**CLAUSE I.39 - FAR 52.219-28 POST-AWARD SMALL BUSINESS PROGRAM  
REREPRESENTATION (SEP 2023)**

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

*Long-term contract* means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

*Small business concern*—

(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (d) of this clause.

(2) *Affiliates*, as used in this definition, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

(b) If the Contractor represented that it was any of the small business concerns identified in 19.000(a)(3) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, upon occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts-

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) If the Contractor represented that it was any of the small business concerns identified in 19.000(a)(3) prior to award of this contract, the Contractor shall rerepresent its size and socioeconomic status according to paragraph (f) of this clause or, if applicable, paragraph (h) of this clause, when the Contracting Officer explicitly requires it for an order issued under a multiple-award contract.

(d) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code(s) assigned to this contract. The small business size standard corresponding to this NAICS code(s) can be found at <https://www.sba.gov/document/support--table-size-standards>.

(e) The small business size standard for a Contractor providing an end item that it does not manufacture, process, or produce itself, for a contract other than a construction or service contract, is 500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519, if the acquisition—

(1) Was set aside for small business and has a value above the simplified acquisition threshold;

(2) Used the HUBZone price evaluation preference regardless of dollar value, unless the Contractor waived the price evaluation preference; or

(3) Was an 8(a), HUBZone, service-disabled veteran-owned, economically disadvantaged women-owned, or women-owned small business set-aside or sole-source award regardless of dollar value.

(f) Except as provided in paragraph (h) of this clause, the Contractor shall make the representation(s) required by paragraph (b) and (c) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause, or with its offer for an order (see paragraph (c) of this clause), that the data have been validated or updated, and provide the date of the validation or update.

(g) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (f) or (h) of this clause.

(h) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

(1) The Contractor represents that it  is,  is not a small business concern under *NAICS Code* \_\_\_\_\_ assigned to *contract number* \_\_\_\_\_.

(2) [ *Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.*] The Contractor represents that it  is,  is not, a small disadvantaged business concern as defined in 13 CFR 124.1001..

(3) [ *Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.* ] The Contractor represents that it  is,  is not a women-owned small business concern.

(4) Women-owned small business (WOSB) joint venture eligible under the WOSB Program. The Contractor represents that it  is,  is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [ *The Contractor shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_.*]

(5) Economically disadvantaged women-owned small business (EDWOSB) joint venture. The Contractor represents that it  is,  is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [ *The Contractor shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_ .*]

(6) [ *Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.* ] The Contractor represents that it  is,  is not a veteran-owned small business concern.

(7) [ *Complete only if the Contractor represented itself as a veteran-owned small business concern in paragraph (h)(6) of this clause.*] The Contractor represents that it  is,  is not a service-disabled veteran-owned small business concern.

(8) [ *Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.* ] The Contractor represents that—

(i) It  is,  is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business

Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR part 126; and

(ii) It  is,  is not a HUBZone joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (h)(8)(i) of this clause is accurate for each HUBZone small business concern participating in the HUBZone joint venture. *[The Contractor shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: \_\_\_\_\_.]* Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

*[Contractor to sign and date and insert authorized signer's name and title. \_\_\_\_\_]*

**CLAUSE I.40 - 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.

**CLAUSE I.41 - 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

(i) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

**CLAUSE I.42 - FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS-OVERTIME COMPENSATION (MAY 2018)**

(a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate specified at 29 CFR 5.5(b)(2) per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37). In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Note), the Department of Labor adjusts this civil monetary penalty for inflation no later than January 15 each year.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards statute.

(d) *Payrolls and basic records.*

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

**CLAUSE I.43 - FAR 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (MAY 2014)**

(a) *Definition.* "Construction, alteration or repair," as used in this clause means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation --

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the FAR clause at 52.222-6, Construction Wage Rate Requirements of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of the work" definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the “site of the work” definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Construction Wage Rate Requirements, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the “site of the work” definition).

(b) The Contractor or subcontractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—

(1) Construction Wage Rate Requirements;

(2) Contract Work Hours and Safety Standards -- Overtime Compensation (if the clause is included in this contract);

(3) Apprentices and Trainees;

(4) Payrolls and Basic Records;

(5) Compliance with Copeland Act Requirements

(6) Withholding of Funds;

(7) Subcontracts (Labor Standards);

(8) Contract Termination – Debarment;

(9) Disputes Concerning Labor Standards;

(10) Compliance with Construction Wage Rate Requirements and Related Regulations; and

(11) Certification of Eligibility.

(c) The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).

(d) (1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor’s signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

**CLAUSE I.44 - FAR 52.222-19 CHILD LABOR-COOPERATION WITH AUTHORITIES AND REMEDIES (NOV 2023)**

(a) Applicability. This clause does not apply to the extent that the Contractor is supplying end products mined, produced, or manufactured in-

(1) Israel, and the anticipated value of the acquisition is \$50,000 or more;

(2) Mexico, and the anticipated value of the acquisition is \$92,319 or more; or

(3) Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or the United Kingdom and the anticipated value of the acquisition is \$183,000 or more.

(b) Cooperation with Authorities. To enforce the laws prohibiting the manufacture or importation of products mined, produced, or manufactured by forced or indentured child labor, authorized officials may need to conduct investigations to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under this contract. If the solicitation includes the provision 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products, or the equivalent at 52.212-3(i), the Contractor agrees to cooperate fully with authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice by providing reasonable access to records, documents, persons, or premises upon reasonable request by the authorized officials.

(c) Violations. The Government may impose remedies set forth in paragraph (d) for the following violations:

(1) The Contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor for listed end products.

(2) The Contractor has failed to cooperate, if required, in accordance with paragraph (b) of this clause, with an investigation of the use of forced or indentured child labor by an Inspector General, Attorney General, or the Secretary of the Treasury.

(3) The Contractor uses forced or indentured child labor in its mining, production, or manufacturing processes.

(4) The Contractor has furnished under the contract end products or components that have been mined, produced, or manufactured wholly or in part by forced or indentured child labor. (The Government will not pursue remedies at paragraph (d)(2) or paragraph (d)(3) of this clause unless sufficient evidence indicates that the Contractor knew of the violation.)

(d) Remedies.

(1) The Contracting Officer may terminate the contract.

(2) The suspending official may suspend the Contractor in accordance with procedures in FAR subpart 9.4.

(3) The debaring official may debar the Contractor for a period not to exceed 3 years in accordance with the procedures in FAR subpart 9.4.

**CLAUSE I.45 - 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](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

*Segregated facilities* means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

*Sexual orientation* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

**CLAUSE I.46 - FAR 52.222-26 EQUAL OPPORTUNITY (SEP 2016)**

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

*Compensation* means any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment, including but not limited to salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing, and retirement.

*Compensation information* means the amount and type of compensation provided to employees or offered to applicants, including, but not limited to, the desire of the Contractor to attract and retain a particular employee for the value the employee is perceived to add to the Contractor's profit or productivity; the availability of employees with like skills in the marketplace; market research about the worth of similar jobs in the relevant marketplace; job analysis, descriptions, and evaluations; salary and pay structures; salary surveys; labor union agreements; and Contractor decisions, statements and policies related to setting or altering employee compensation.

*Essential job functions* means the fundamental job duties of the employment position an individual holds. A job function may be considered essential if—

(1) The access to compensation information is necessary in order to perform that function or another routinely assigned business task; or

(2) The function or duties of the position include protecting and maintaining the privacy of employee personnel records, including compensation information.

*Gender identity* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

*Sexual orientation* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

*United States* means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b)(1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000,

the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

(c)(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (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, sexual orientation, gender identity, or national origin.

(5)(i) The Contractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This prohibition against discrimination does not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(ii) The Contractor shall disseminate the prohibition on discrimination in paragraph (c)(5)(i) of this clause, using language prescribed by the Director of the Office of Federal Contract Compliance Programs (OFCCP), to employees and applicants by—

(A) Incorporation into existing employee manuals or handbooks; and

(B) Electronic posting or by posting a copy of the provision in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(7) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(8) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(9) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(10) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.



(11) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(12) The Contractor shall take such action with respect to any subcontract or purchase order as the Director of OFCC P may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; *provided*, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR part 60-1.

**CLAUSE I.47 - FAR 52.222-29 NOTIFICATION OF VISA DENIAL (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](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

*Sexual orientation* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

(b) *Requirement to notify.* (1) It is a violation of Executive Order 11246 for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, on the basis that the individual's race, color, religion, sex, sexual orientation, gender identity, or national origin is not compatible with the policies of the country where or for whom the work will be performed (41 CFR 60-1.10).

(2) The Contractor shall notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW., Room 6212, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country where this contract will be performed, and it believes the denial is attributable to the race, color, religion, sex, sexual orientation, gender identity, or national origin of the employee or potential employee.

**CLAUSE I.48 - FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (JUN 2020)**

(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 Federal Acquisition Regulation (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 valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

**CLAUSE I.49 - FAR 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUN 2020)**

(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 the threshold specified in Federal Acquisition Regulation (FAR) 22.1408(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

**CLAUSE I.50 - FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS (JUN 2020)**

(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 Federal Acquisition Regulation (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 protected 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 submit 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 valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor.

**CLAUSE I.51 - 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 Web site that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster. The link to the Department's Web site, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers".

(b) This required employee notice, printed by the Department of Labor, may be –

(1) Obtained from the Division of Interpretations and Standards, office of Labor-Management Standards, U. S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Provided by the Federal contracting agency if requested;

(3) Downloaded from the Office of Labor-Management Standards Web site at <http://www.doe.gov/olms/regs/compliance/EO13496.thm>; or

(4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart 9.4. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.

(2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.

(3) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

(4) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

**CLAUSE I.52 - FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (NOV 2021)**

(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”--

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

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (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.

"Recruitment fees" means fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

(1) Recruitment fees include, but are not limited to, the following fees (when they are associated with the recruiting process) for—

(i) Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending, or placing employees or potential employees;

(ii) Advertising;

(iii) Obtaining permanent or temporary labor certification, including any associated fees;

(iv) Processing applications and petitions;

(v) Acquiring visas, including any associated fees;

(vi) Acquiring photographs and identity or immigration documents, such as passports, including any associated fees;

(vii) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;

(viii) An employer's recruiters, agents or attorneys, or other notary or legal fees;

(ix) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to employees or potential employees;

(x) Government-mandated fees, such as border crossing fees, levies, or worker welfare funds;

(xi) Transportation and subsistence costs—

(A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and

(B) From the airport or disembarkation point to the worksite;

(xii) Security deposits, bonds, and insurance; and

(xiii) Equipment charges.

(2) A recruitment fee, as described in the introductory text of this definition, is a recruitment fee, regardless of whether the payment is—

(i) Paid in property or money;

(ii) Deducted from wages;

(iii) Paid back in wage or benefit concessions;

(iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute;  
or

(v) Collected by an employer or a third party, whether licensed or unlicensed, including, but not limited to—

(A) Agents;

(B) Labor brokers;

(C) Recruiters;

(D) Staffing firms (including private employment and placement firms);

(E) Subsidiaries/affiliates of the employer;



(F) Any agent or employee of such entities; and

(G) Subcontractors at all tiers.

“Severe forms of trafficking in persons” means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

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

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

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

(b) Policy. The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents shall not—

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract;

(3) Use forced labor in the performance of the contract.

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5) (i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language

understood by the employee or potential employee, 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 costs to be charged to the employee or potential 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 or potential employees recruitment fees;

(7) (i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment--

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that--

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is--

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still

needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) Contractor requirements. The Contractor shall—

(1) Notify its employees and agents of—

(i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) Notification.

(1) The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of—

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-13(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and

(ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one contract, the Contractor shall inform the contracting officer for the contract with the highest dollar value.

(e) Remedies. In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in—

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract payments until the Contractor has taken appropriate remedial action;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Declining to exercise available options under the contract;

(6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(7) Suspension or debarment.

(f) Mitigating and aggravating factors. When determining remedies, the Contracting Officer may consider the following:

(1) Mitigating factors. The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

(2) Aggravating factors. The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) Full cooperation. (1) The Contractor shall, at a minimum—

(i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not—

(i) Require the Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;

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

(iii) Restrict the Contractor from—

(A) Conducting an internal investigation; or

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

(h) Compliance plan. (1) This paragraph (h) applies to any portion of the contract that—

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds \$550,000.

(2) The Contractor shall maintain a compliance plan during the performance of the contract that is appropriate—

(i) To the size and complexity of the contract; and

(ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.

(3) Minimum requirements. The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform contractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at [help@befree.org](mailto: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 employees or potential employees, 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—

(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 \$550,000.

(2) If any subcontractor is required by this clause to submit a certification, the Contractor shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

**CLAUSE I.53 - FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (MAY 2022)**

(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 product (as defined in paragraph (1) of the definition of "commercial product" at Federal Acquisition Regulation (FAR) 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 requirements 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: <https://www.e-Verify.gov>.

(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) 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.

**CLAUSE I.54 - FAR 52.223-2 AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (SEP 2013)**

(a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless—

(1) The product cannot be acquired—

(i) Competitively within a time frame providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:

(i) Spacecraft system and launch support equipment.

(ii) Military equipment, *i.e.*, a product or system designed or procured for combat or combat-related missions.

(b) Information about this requirement and these products is available at <http://www.biopreferred.gov>.

(c) In the performance of this contract, the Contractor shall—

(1) Report to <http://www.sam.gov>, with a copy to the Contracting Officer, on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30; and

(2) Submit this report no later than—

(i) October 31 of each year during contract performance; and

(ii) At the end of contract performance.

**CLAUSE I.55 - FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (FEB 2021) (ALTERNATE I) (JULY 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 (If none, insert <i>None</i> )	Identification No.
_____	_____
_____	_____
_____	_____

(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 paragraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which

accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

**CLAUSE I.56 - FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (MAY 2011) (ALTERNATE I) (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.

**CLAUSE I.57 - FAR 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)**

(a) The Contractor shall notify the Contracting Officer or designee, in writing, 30 days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either

(1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the

Code of Federal Regulations, in effect on the date of this contract, or

(2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries.

Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall -

(1) Be submitted in writing;

(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

**CLAUSE I.58 - 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 post-consumer material content; and

(2) Submit this estimate to Rick Hersemann, 630-840-4122, Rick.Hersemann@science.doe.gov.

**CLAUSE I.59 - 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.

**CLAUSE I.60 - FAR 52.223-11 OZONE-DEPLETING SUBSTANCES AND HIGH GLOBAL WARMING POTENTIAL HYDROFLUOROCARBONS (JUN 2016)**

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

“Global warming potential” means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon Dioxide’s global warming potential is defined as 1.0.

“High global warming potential hydrofluorocarbons” means any hydrofluorocarbons in a particular end use for which EPA’s Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at (<http://www.epa.gov/snap/> ).



“Hydrofluorocarbons” means compounds that only contain hydrogen, fluorine, and carbon.

“Ozone-depleting substance” means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as--

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to hydrochlorofluorocarbons.

(b) The Contractor shall label products 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), (d), and (e) and 40 CFR Part 82, Subpart E, as follows:

### **Warning**

Contains (or manufactured with, if applicable) \* \_\_\_\_\_, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

\* The Contractor shall insert the name of the substance(s).

(c) *Reporting.* For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, the Contractor shall—

(1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons contained in the equipment and appliances delivered to the Government under this contract by—

(i) Type of hydrofluorocarbon (e.g., HFC-134a, HFC-125, R-410A, R-404A, etc.);

(ii) Contract number; and

(iii) Equipment/appliance;

(2) Report that information to the Contracting Officer for FY16 and to [www.sam.gov](http://www.sam.gov), for FY17 and after -

(i) Annually by November 30 of each year during contract performance; and

(ii) At the end of contract performance.

(d) The Contractor shall refer to EPA’s SNAP program (available at

<http://www.epa.gov/snap> ) to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables available at <http://www.epa.gov/snap>.

**CLAUSE I.61 - FAR 52.223-12 MAINTENANCE, SERVICE, REPAIR, OR DISPOSAL OF REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (JUN 2016)**

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

“Global warming potential” means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide’s global warming potential is defined as 1.0.

“High global warming potential hydrofluorocarbons” means any hydrofluorocarbons in a particular end use for which EPA’s Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at (<http://www.epa.gov/snap/>).

“Hydrofluorocarbons” means compounds that contain only hydrogen, fluorine, and carbon.

(b) The Contractor shall comply with the applicable requirements of sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

(c) Unless otherwise specified in the contract, the Contractor shall reduce the use, release, or emissions of high global warming potential hydrofluorocarbons under this contract by—

(1) Transitioning over time to the use of another acceptable alternative in lieu of high global warming potential hydrofluorocarbons in a particular end use for which EPA’s SNAP program has identified other acceptable alternatives that have lower global warming potential.

(2) Preventing and repairing refrigerant leaks through service and maintenance during contract performance;

(3) Implementing recovery, recycling, and responsible disposal programs that avoid release or emissions during equipment service as the equipment reaches the end of its useful life; and

(4) Using reclaimed hydrofluorocarbons, where feasible.

(d) For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, that will be

maintained, serviced, repaired, or disposed under this contract, the Contractor shall—

(1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons added or taken out of equipment or appliances under this contract by—

(i) Type of hydrofluorocarbon (e.g., HFC-134a, HFC-125, R-410A, R-404A, etc.);

(ii) Contract number;

(iii) Equipment/appliance; and

(2) Report that information to the Contracting Officer for FY16 and to [www.sam.gov](http://www.sam.gov), for FY17 and after--

(i) No later than November 30 of each year during contract performance; and

(ii) At the end of contract performance.

(e) The Contractor shall refer to EPA's SNAP program to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables available at <http://www.epa.gov/snap/>.

**CLAUSE I.62 - FAR 52.223-13 ACQUISITION OF EPEAT-REGISTERED IMAGING EQUIPMENT (JUN 2014)**

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

*Imaging equipment* means the following products:

(1) *Copier*—A commercially available imaging product with a sole function of the production of hard copy duplicates from graphic hard-copy originals. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as copiers or upgradeable digital copiers (UDCs).

(2) *Digital duplicator*—A commercially available imaging product that is sold in the market as a fully automated duplicator system through the method of stencil duplicating with digital reproduction functionality. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as digital duplicators.

(3) *Facsimile machine (fax machine)*—A commercially available imaging product whose primary functions are scanning hard-copy originals for electronic transmission to remote units and receiving similar electronic transmissions to produce hard-copy output. Electronic transmission is primarily over a public telephone system but also

may be via computer network or the Internet. The product also may be capable of producing hard copy duplicates. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as fax machines.

(4) *Mailing machine*—A commercially available imaging product that serves to print postage onto mail pieces. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as mailing machines.

(5) *Multifunction device (MFD)*—A commercially available imaging product, which is a physically integrated device or a combination of functionally integrated components, that performs two or more of the core functions of copying, printing, scanning, or faxing. The copy functionality as addressed in this definition is considered to be distinct from single-sheet convenience copying offered by fax machines. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as MFDs or multifunction products.

(6) *Printer*—A commercially available imaging product that serves as a hard-copy output device and is capable of receiving information from single-user or networked computers, or other input devices (e.g., digital cameras). The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as printers, including printers that can be upgraded into MFDs in the field.

(7) *Scanner*—A commercially available imaging product that functions as an electro-optical device for converting information into electronic images that can be stored, edited, converted, or transmitted, primarily in a personal computing environment. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as scanners.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for Contractor use at a Federally controlled facility, only imaging equipment that, at the time of submission of proposals and at the time of award, was EPEAT<sup>®</sup> bronze-registered or higher.

(c) For information about EPEAT<sup>®</sup>, see [www.epa.gov/epeat](http://www.epa.gov/epeat).

**CLAUSE I.63 - FAR 52.223-14 ACQUISITION OF EPEAT-REGISTERED TELEVISIONS (JUN 2014)**

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

*Television* or *TV* means a commercially available electronic product designed primarily for the reception and display of audiovisual signals received from terrestrial,

cable, satellite, Internet Protocol TV (IPTV), or other digital or analog sources. A TV consists of a tuner/receiver and a display encased in a single enclosure. The product usually relies upon a cathode-ray tube (CRT), liquid crystal display (LCD), plasma display, or other display technology. Televisions with computer capability (e.g., computer input port) may be considered to be a TV as long as they are marketed and sold to consumers primarily as televisions.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for Contractor use at a Federally controlled facility, only televisions that, at the time of submission of proposals and at the time of award, were EPEAT<sup>®</sup> bronze-registered or higher.

(c) For information about EPEAT<sup>®</sup>, see [www.epa.gov/epeat](http://www.epa.gov/epeat).

**CLAUSE I.64 - FAR 52.223-15 ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (MAY 2020)**

(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<sup>®</sup> 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 <https://www.energy.gov/eere/femp/energy-efficient-products-and-energy-saving-technologies>.

**CLAUSE I.65 - 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 1394-2008<sup>TM</sup>, 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<sup>®</sup> bronze-registered or higher.

(c) For information about EPEAT<sup>®</sup>, see [www.epa.gov/epeat](http://www.epa.gov/epeat).

**CLAUSE I.66 - FAR 52.223-17 AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (AUG 2018)**

(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. The list of EPA-designate items is available at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

**CLAUSE I.67 – FAR 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (JUN 2020)**

(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 reevaluation 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, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

**CLAUSE I.68 - 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.

**CLAUSE I.69 - FAR 52.223-20 AEROSOLS (JUNE 2016)**

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

*Global warming potential* means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

*High global warming potential hydrofluorocarbons* means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82 subpart G with supplemental tables of alternatives available at (<http://www.epa.gov/snap/>).

*Hydrofluorocarbons* means compounds that only contain hydrogen, fluorine, and carbon.

(b) Unless otherwise specified in the contract, the Contractor shall reduce its use, release, or emissions of high global warming potential hydrofluorocarbons, when feasible, from aerosol propellants or solvents under this contract. When determining feasibility of using a particular alternative, the Contractor shall consider environmental, technical, and economic factors such as—

- (1) In-use emission rates, energy efficiency;
- (2) Safety, such as flammability or toxicity;
- (3) Ability to meet technical performance requirements; and

(4) Commercial availability at a reasonable cost.

(c) The Contractor shall refer to EPA's SNAP program to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82 subpart G with supplemental tables available at <http://www.epa.gov/snap/>.

**CLAUSE I.70 - FAR 52.223-21 FOAMS (JUNE 2016)**

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

*Global warming potential* means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

*High global warming potential hydrofluorocarbons* means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82 subpart G with supplemental tables of alternatives available at (<http://www.epa.gov/snap/>).

*Hydrofluorocarbons* means compounds that only contain hydrogen, fluorine, and carbon.

(b) Unless otherwise specified in the contract, the Contractor shall reduce its use, release, and emissions of high global warming potential hydrofluorocarbons and refrigerant blends containing hydrofluorocarbons, when feasible, from foam blowing agents, under this contract. When determining feasibility of using a particular alternative, the Contractor shall consider environmental, technical, and economic factors such as—

- (1) In-use emission rates, energy efficiency, and safety;
- (2) Ability to meet performance requirements; and
- (3) Commercial availability at a reasonable cost.

(c) The Contractor shall refer to EPA's SNAP program to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82 subpart G with supplemental tables available at <http://www.epa.gov/snap/>.

**CLAUSE I.71 - 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.

**CLAUSE I.72 - 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 system of records; and

(ii) The design, development, or operation work that the Contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c)(1) "Operation of a system of records", as used in this Clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record", as used in this Clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this Clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

**CLAUSE I.73 - 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 24.3 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.

**CLAUSE I.74 - FAR 52.225-1 BUY AMERICAN ACT-SUPPLIES (OCT 2022);  
MODIFIED BY DEAR 970.2570**

(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 product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (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.

*Critical component* means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105 .

*Domestic end product* means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both-

(i) An unmanufactured end product mined or produced in the United States;

(ii) An end product manufactured in the United States, if-

(A)The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029. 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. Components of unknown origin are treated as

foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all the components used in the end product. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the end product and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the definition of "cost of components".

*End product* means those articles, materials, and supplies to be acquired under the contract for public use.

*Fastener* means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

*Foreign end product* means an end product other than a domestic end product.

*Foreign iron and steel* means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

*Predominantly of iron or steel or a combination of both* means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

*Steel* means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

*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 domestic content test of the Buy American statute is waived for an end product that is a COTS item (see 12.505(a)(1)), except that for an end product that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the end product, excluding COTS fasteners.

(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 use only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Certificate."

**CLAUSE I.75 - 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.

**CLAUSE I.76 - FAR 52.225-9 BUY AMERICAN-CONSTRUCTION MATERIALS (OCT 2022)**

(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 product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (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.

"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.

*Critical component* means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

*Critical item* means a domestic construction material or domestic end product that is deemed critical to U.S. supply chain resiliency. The list of critical items is at FAR 25.105.

*Domestic construction material means—*

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both-

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if-

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components".

*Fastener* means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

*Foreign construction material* means a construction material other than a domestic construction material.

*Foreign iron and steel* means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

*Predominantly of iron or steel or a combination of both* means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

*Steel* means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

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

(b) Domestic preference. (1) This clause implements 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 domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction materials, excluding COTS fasteners. (See FAR 12.505(a)(2)). The Contractor shall use

only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to information technology that is a commercial product 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.

(A) *For domestic construction material that is not a critical item or does not contain critical components.*

*(1) The cost of a particular domestic construction material subject to the requirements of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent;*

*(2) For construction material that is not a COTS item and does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that is manufactured in the United States and does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest offer of foreign construction material that exceeds 55 percent domestic content as a domestic offer and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(3)(i)(A)(1) of this clause.*

*(3) The procedures in paragraph (b)(3)(i)(A)(2) of this clause will no longer apply as of January 1, 2030.*

(B) *For domestic construction material that is a critical item or contains critical components. (1) The cost of a particular domestic construction material that is a critical item or contains critical components, subject to the requirements of the Buy American statute, is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent plus the additional preference factor identified for the critical item or construction material containing critical components listed at FAR 25.105.*

*(2) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest foreign offer of construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer, and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(3)(i)(B)(1) of this clause.*

*(3) The procedures in paragraph (b)(3)(i)(B)(2) of this clause will no longer apply as of January 1, 2030.*

(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 statute. (1)

(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including-

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

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

Foreign and Domestic Construction Materials Price Comparison			
Construction material description	Unit of measure	Quantity	Price (dollars) *
Item 1:			
Foreign construction material			
Domestic construction material			
Items 2:			
Foreign construction material			
Domestic construction material			

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

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

[Include other applicable supporting information.]

**CLAUSE I.77 - FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2021)**

(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 <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>. 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 <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

**CLAUSE I.78 - FAR 52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUNE 2000)**

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

*Indian* means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C.1452(c) and any "Native" as defined in the Alaska Native Claims Settlement Act ( 43 U.S.C.1601).

*Indian organization* means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., Chapter 17.



*Indian-owned economic enterprise* means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

*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, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C.1452(c).

*Interested party* means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises ( 25 U.S.C.1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the U.S. Department of the Interior Bureau of Indian Affairs (BIA) Attn: Chief, Division of Contracting and Grants Administration 1849 C Street, NW, MS-2626-MIB Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

- (i) The estimated cost of a cost-type contract.
- (ii) The target cost of a cost-plus-incentive-fee prime contract.
- (iii) The target cost and ceiling price of a fixed-price incentive prime contract.
- (iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

**CLAUSE I.79 - FAR 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)**

Except for data contained on pages of [ ] Volume I, Volume II, and Volume III (except those pages incorporated into the contract), it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data-General" clause contained in this contract) in and to the technical data contained in the proposal dated TBD, upon which this contract is based.

**CLAUSE I.80 - FAR 52.229-8 TAXES-FOREIGN COST-REIMBURSEMENT CONTRACTS (MAR 1990)**

(a) Any tax or duty from which the United States Government is exempt by agreement with the Government of Switzerland or the successor states of the former Soviet Union, (the Ukraine, Belarus, Kazakstan, Russia, the Baltic States of Latvia and Lithuania, and Uzbekistan) or from which the Contractor or any subcontractor under this contract is exempt under the laws of Switzerland or the successor states of the former Soviet Union, (the Ukraine, Belarus, Kazakstan, Russia, the Baltic States of Latvia and Lithuania, and Uzbekistan) shall not constitute an allowable cost under this contract.

(b) If the Contractor or subcontractor under this contract obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction shall be paid or credited at the time of such offset to the Government of the United States as the Contracting Officer directs.

**CLAUSE I.81 - FAR 52.230-2 COST ACCOUNTING STANDARDS (JUN 2020)**

(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 paragraph (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 paragraph (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 paragraph (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 (FAR) shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of the lower CAS threshold specified in FAR 30.201-4(b) on the date of subcontract award, 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.

**CLAUSE I.82 - FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUNE 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 become applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or

(2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the Contractor to remain in compliance.

*Unilateral change* means a change in cost accounting practice from one compliant practice to another compliant practice that a Contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

(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 noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the Contractor used a compliant practice, the difference is increased cost to the Government.

(ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the Contractor used a compliant practice, the difference is decreased cost to the Government.

(3) For noncompliances that involve accumulating costs, determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.

(ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is decreased cost to the Government.

(4) Calculate the total increase or decrease in contract and subcontracts incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the Contractor used a compliant practice.

(5) Calculate the increased cost to the Government in the aggregate.

(j) If the Contractor does not submit the information required by paragraph (b) or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO may take one or both of the following actions:

(1) Withhold an amount not to exceed 10 percent of each subsequent amount payment to the Contractor's affected CAS-covered contracts, (up to the estimated general dollar magnitude of the cost impact), until such time as the Contractor provides the required information to the CFAO.

(2) Issue a final decision in accordance with FAR 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.

(k) Agree to-

(1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4)(ii) or (a)(5) of the clauses at FAR 52.230-2 and 52.230-5; or with paragraph (a)(3)(i) or (a)(4) of the clauses at FAR 52.230-3 and FAR 52.230-4; and

(2) Repay the Government for any aggregate increased cost paid to the Contractor.

(l) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, 52.230-4, or 52.230-5-

(1) So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);

(2) Include the substance of this clause in all negotiated subcontracts; and

(3) Within 30 days after award of the subcontract, submit the following information to the Contractor's CFAO:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(m) Notify the CFAO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment to this contract price or estimated cost and fee. The Contractor shall-

(1) Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and

(2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.

(n) For subcontracts containing the clause or substance of the clause at FAR 52.230-2, FAR 52.230-3, FAR 52.230-4, or FAR 52.230-5, require the

subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

**CLAUSE I.83 - 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.

**CLAUSE I.84 - 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.

**CLAUSE I.85 - 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.

**CLAUSE I.86 - FAR 52.232-39 UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS (JUN 2013)**

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(1) Any such clause is unenforceable against the Government.

(2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not

bind the Government or any Government authorized end user to such clause.

(3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(b) Paragraph (a) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures

**CLAUSE I.87 - FAR 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (MAR 2023)**

(a) (1) In accordance with 31 U.S.C. 3903 and 10 U.S.C. 3801, within 15 days after 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.

(2) The Contractor agrees to make such payments to its small business subcontractors without any further consideration from or fees charged to the 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 products or commercial services.

**CLAUSE I.88 - 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 authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in 41 U.S.C. chapter 71.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

**CLAUSE I.89 - FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996) (ALTERNATE I) (JUNE 1985)**

(a) Upon receipt of a notice of protest (as defined in 33.101 of the FAR) the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause.

Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either --

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this contract.

(b) If a stop-work order issued under this clause is cancelled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if -

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within thirty (30) days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

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

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

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this Clause.

(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.

**CLAUSE I.90 - 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.

**CLAUSE I.91 - FAR 52.236-8 OTHER CONTRACTS (APR 1984)**

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

**CLAUSE I.92 - 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.

**CLAUSE I.93 - 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 paragraph (a)(1) of this clause, 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.

**CLAUSE I.94 - FAR 52.242-3 PENALTIES FOR UNALLOWABLE COSTS (DEC 2022)(DEVIATION)(PF 2022-23)(OCT 2021)**

(a) *Definition. Proposal*, as used in this clause, means either—

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which-

- (i) Relates to any payment made on the basis of billing rates; or
- (ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 3748 or 41 U.S.C. chapter 43, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).

(c) The Contractor shall not include in any proposal any cost that is unallowable, as defined in subpart 2.1 of the FAR, or an executive agency supplement to the FAR.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to—

(1) The amount of the disallowed cost allocated to this contract; plus

(2) Simple interest, to be computed-

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and

(ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub.L.92-41 (85 Stat.97).

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of 41 U.S.C. chapter 71, Contract Disputes.

(g) Pursuant to the criteria in FAR 42.709-6, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.

(h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

**CLAUSE I.95 - FAR 52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)(DEVIATION)(PF 2022-23)(OCT 2021)**

(a) The Contractor shall-

(1) Certify any proposal to establish or modify final indirect cost rates;

(2) Use the format in paragraph (c) of this clause to certify; and

(3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.

(b) Failure by the Contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the Contracting Officer.

(c) The certificate of final indirect costs shall read as follows:

Certificate of Final Indirect Costs

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and

2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Certifying Official: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

**CLAUSE I.96 - FAR 52.242-5 PAYMENTS TO SMALL BUSINESS  
SUBCONTRACTORS (JAN 2017)**

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

*Reduced payment* means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.

*Untimely payment* means a payment that is more than 90 days past due under the terms and conditions of a subcontract, for supplies and services for which the Government has paid the prime contractor.

(b) *Notice*. The Contractor shall notify the Contracting Officer, in writing, not later than 14 days after-

(1) A small business subcontractor was entitled to payment under the terms and conditions of the subcontract; and

(2) The Contractor-

(i) Made a reduced or untimely payment to the small business subcontractor;  
or

(ii) Failed to make a payment, which is now untimely.

(c) *Content of notice*. The Contractor shall include the reason(s) for making the reduced or untimely payment in any notice required under paragraph (b) of this clause.

**CLAUSE I.97 - 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, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

**CLAUSE I.98 - 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.

**CLAUSE I.99 - FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (DEC 2023)**

(a) Definitions. As used in this clause—

Commercial product, commercial service and commercially available off-the-shelf item have the meanings contained in Federal Acquisition Regulation (FAR) 2.101.

Subcontract includes a transfer of commercial products or commercial services 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 products, commercial services, or non-developmental items as components of items to be supplied under this contract.

(c) (1) The Contractor shall insert the following clauses in subcontracts for commercial products or commercial services:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Nov 2021) ( 41 U.S.C. 3509), if the subcontract exceeds the threshold specified in FAR 3.1004(a) on the date of subcontract award, 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) 52.203-17, Contractor Employee Whistleblower Rights (Nov 2023) ( 41 U.S.C. 4712); this clause does not apply to contracts of DoD, NASA, the Coast Guard, or applicable elements of the intelligence community—see FAR 3.900(a).

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

(v) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (Nov 2021) , 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.

(vi) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab Covered Entities (Dec 2023) (Section 1634 of Pub. L. 115-91).

(vii) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(viii) 52.204-27, Prohibition on a ByteDance Covered Application (Jun 2023) (Section 102 of Division R of Pub. L. 117-328).



(ix) (A) 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition. (Dec 2023) ( Pub. L. 115–390, title II).

(B) Alternate I (Dec 2023) of 52.204–30.

(x) 52.219-8, Utilization of Small Business Concerns (Sep 2023) (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 the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(xi) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(xii) 52.222-26, Equal Opportunity (Sept 2016) (E.O.11246).

(xiii) 52.222-35, Equal Opportunity for Veterans (Jun 2020) (38 U.S.C.4212(a));

(xiv) 52.222-36, Equal Opportunity for Workers with Disabilities (Jun 2020)(29 U.S.C.793).

(xv) 52.222-37, Employment Reports on Veterans (Jun 2020) ( 38 U.S.C.4212).

(xvi) 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.

(xvii) (A) 52.222-50, Combating Trafficking in Persons (Nov 2021) ( 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).

(xviii) 52.222-55, Minimum Wages for Contractor Workers under Executive Order 14026 (Jan 2022), if flow down is required in accordance with paragraph (k) of FAR clause 52.222-55.

(xix) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2022) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause 52.222-62.

(xx) (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).

(xxi) 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. Subtitle A, Part V, Subpart G Note).

(xxii) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Mar 2023) , if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

(xxiii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) (46 U.S.C. 55305 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 products or commercial services 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.

**CLAUSE I.100 - FAR 52.246-26 REPORTING NONCONFORMING ITEMS (NOV 2021)**

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

*Common item* means an item that has multiple applications versus a single or peculiar application.

*Counterfeit item* means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified item from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used items represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

*Critical item* means an item, the failure of which is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the item; or is likely to prevent performance of a vital agency mission.

*Critical nonconformance* means a nonconformance that is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services; or is likely to prevent performance of a vital agency mission.

*Design activity* means an organization, Government or contractor, that has responsibility for the design and configuration of an item, including the preparation or

maintenance of design documents. Design activity could be the original organization, or an organization to which design responsibility has been transferred.

*Major nonconformance* means a nonconformance, other than critical, that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose.

*Suspect counterfeit item* means an item for which credible evidence (including but not limited to, visual inspection or testing) provides reasonable doubt that the item is authentic.

(b) The Contractor shall—

(1) Screen Government-Industry Data Exchange Program (GIDEP) reports, available at [www.gidep.org](http://www.gidep.org), as a part of the Contractor's inspection system or program for the control of quality, to avoid the use and delivery of counterfeit or suspect counterfeit items or delivery of items that contain a major or critical nonconformance. This requirement does not apply if the Contractor is a foreign corporation or partnership that does not have an office, place of business, or fiscal paying agent in the United States;

(2) Provide written notification to the Contracting Officer within 60 days of becoming aware or having reason to suspect, such as through inspection, testing, record review, or notification from another source (e.g., seller, customer, third party) that any end item, component, subassembly, part, or material contained in supplies purchased by the Contractor for delivery to, or for, the Government is counterfeit or suspect counterfeit;

(3) Retain counterfeit or suspect counterfeit items in its possession at the time of discovery until disposition instructions have been provided by the Contracting Officer; and

(4) Except as provided in paragraph (c) of this clause, submit a report to GIDEP at [www.gidep.org](http://www.gidep.org) within 60 days of becoming aware or having reason to suspect, such as through inspection, testing, record review, or notification from another source (e.g., seller, customer, third party) that an item purchased by the Contractor for delivery to, or for, the Government is—

(i) A counterfeit or suspect counterfeit item; or

(ii) A common item that has a major or critical nonconformance.

(c) The Contractor shall not submit a report as required by paragraph (b)(4) of this clause, if—

(1) The Contractor is a foreign corporation or partnership that does not have an office, place of business, or fiscal paying agent in the United States;

(2) The Contractor is aware that the counterfeit, suspect counterfeit, or nonconforming item is the subject of an on-going criminal investigation, unless the report is approved by the cognizant law-enforcement agency; or

(3) For nonconforming items other than counterfeit or suspect counterfeit items, it can be confirmed that the organization where the defect was generated (*e.g.*, original component manufacturer, original equipment manufacturer, aftermarket manufacturer, or distributor that alters item properties or configuration) has not released the item to more than one customer.

(d) Reports submitted in accordance with paragraph (b)(4) of this clause shall not include—

(1) Trade secrets or confidential commercial or financial information protected under the Trade Secrets Act (18 U.S.C. 1905); or

(2) Any other information prohibited from disclosure by statute or regulation.

(e) Additional guidance on the use of GIDEP is provided at <http://www.giddep.org/about/opmanual/opmanual.htm>.

(f) If this is a contract with the Department of Defense, as provided in paragraph (c)(5) of section 818 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81), the Contractor or subcontractor that provides a written report or notification under this clause that the end item, component, part, or material contained electronic parts (*i.e.*, an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly)) that are counterfeit electronic parts or suspect counterfeit electronic parts shall not be subject to civil liability on the basis of such reporting, provided that the Contractor or any subcontractor made a reasonable effort to determine that the report was factual.

(g) Subcontracts.

(1) Except as provided in paragraph (g)(2) of this clause, the Contractor shall insert this clause, including this paragraph (g), in subcontracts that are for—

(i) Items subject to higher-level quality standards in accordance with the clause at Federal Acquisition Regulation (FAR) 52.246-11, Higher-Level Contract Quality Requirement;

(ii) Items that the Contractor determines to be critical items for which use of the clause is appropriate;

(iii) Electronic parts or end items, components, parts, or materials containing electronic parts, whether or not covered in paragraph (g)(1)(i) or (ii) of this clause, if the subcontract exceeds the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, and this contract is by, or for, the Department of Defense (as required by paragraph (c)(4) of section 818 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81)); or

(iv) For the acquisition of services, if the subcontractor will furnish, as part of the service, any items that meet the criteria specified in paragraphs (g)(1)(i) through (g)(1)(iii) of this clause.

(2) The Contractor shall not insert the clause in subcontracts for—

(i) Commercial products and commercial services; or

(ii) Medical devices that are subject to the Food and Drug Administration reporting requirements at 21 CFR 803.

(3) The Contractor shall not alter the clause other than to identify the appropriate parties.

**CLAUSE I.101 - 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 U.S. Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government.

(b) If the Government is not shown as the consignor or the consignee, the annotation shall be:

Transportation is for the U.S. Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement Contract No. \_\_\_\_\_. This may be confirmed by contacting the U.S. Department of Energy, Fermi Site Office, Kirk Road and Pine Street, PO Box 2000, Batavia, Illinois 60510.

**CLAUSE I.102 - 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 air carriers for international air transportation of personnel (and their personal effects) or property.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

**STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS**

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see Section 47.403 of the Federal Acquisition Regulation): [State reasons]:

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase order under this contract that may involve international air transportation.

**CLAUSE I.103 - FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (NOV 2021)**

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. App. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are -

(1) Acquired for a U.S. Government agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) of this clause, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c) (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both --

(i) The Contracting Officer, and

(ii) The:Office of Cargo Preference Maritime Administration (MAR-590)  
400 Seventh Street, SW  
Washington DC 20590

Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii)

within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (A) Sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in pounds and cubic feet if available.
- (I) Total ocean freight revenue in U.S. dollars.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).

(e) The requirement in paragraph (a) does not apply to --

(1) Cargoes carried in vessels as required or authorized by law or treaty;

(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and

(4) Subcontracts or purchase orders for the acquisition of commercial products or commercial services 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: 202-366-4610

**CLAUSE I.104 - FAR 52.249-6 TERMINATION (COST-REIMBURSEMENT) (MAY 2004); MODIFIED BY DEAR 970.4905-1 (DEC 2000)**

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if --

(1) The Contracting Officer determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of

Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government --

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;

(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and

(iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c) (6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension.

If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the

amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (h)(1) of this clause.

(3) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under subparagraph (h) (4) of this clause.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, as supplemented in Subpart 970.31 of the Department of Energy Acquisition Regulation,

in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor --

(1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or

(2) The amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted --

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or

disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

**CLAUSE I.105 - 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.

**CLAUSE I.106 - FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 2012) (SC ALTERNATE) (APR 2018)**

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 Section I Clause DEAR 970.5245-1 entitled "Property," apply to all property acquired under such authorization.

**CLAUSE I.107 - 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.

**CLAUSE I.108 - FAR 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (NOV 2020)**

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(b) The use in this solicitation or contract of any Department of Energy Acquisition Regulation (48 CFR Chapter 9) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

**CLAUSE I.109 - 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.

**CLAUSE I.110 - 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.

**CLAUSE I.111 - DEAR 952.204-2 SECURITY REQUIREMENTS (AUG 2016)**

(a) *Responsibility*. It is the Contractor's duty to protect all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material and special nuclear material) which are in the Contractor's possession in connection with the performance of work under this contract against sabotage, espionage, loss or theft. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter or special nuclear material in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and classification levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the classified matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(b) *Regulations*. The Contractor agrees to comply with all security regulations and contract requirements of DOE as incorporated into the contract.

(c) *Definition of classified information*. The term *Classified Information* means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, *Classified National Security Information*, as amended, or prior executive orders, which is identified as *National Security Information*.

(d) *Definition of restricted data*. The term *Restricted Data* means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 [Section 142, as amended, of the Atomic Energy Act of 1954].

(e) *Definition of formerly restricted data*. The term "*Formerly Restricted Data*" means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information - (1) Relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.



(f) *Definition of national security information.* The term “*National Security Information*” means information that has been determined, pursuant to Executive Order 12958, Classified National Security Information, as amended, or any predecessor order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.

(g) *Definition of special nuclear material.* The term “special nuclear material” means - (1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which, pursuant to 42 U.S.C. 2071 [section 51 as amended, of the Atomic Energy Act of 1954] has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(h) *Access authorizations of personnel.*

(1) The Contractor shall not permit any individual to have access to any classified information or special nuclear material, except in accordance with the Atomic Energy Act of 1954, and the DOE's regulations and contract requirements applicable to the particular level and category of classified information or particular category of special nuclear material to which access is required.

(2) The Contractor must conduct a thorough review, as defined at 48 CFR 904.401, of an uncleared applicant or uncleared employee, and must test the individual for illegal drugs, prior to selecting the individual for a position requiring a DOE access authorization.

(i) A review must - Verify an uncleared applicant's or uncleared employee's educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher learning; contact listed employers for the last three years and listed personal references; conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Contractor is located; and conduct a credit check and other checks as appropriate.

(ii) Contractor reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (d).

(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) The Contractor must maintain a record of information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization. Upon request only, the following information will be furnished to the head of the cognizant local DOE Security Office:

(A) The date(s) each Review was conducted;

(B) Each entity that provided information concerning the individual;

(C) A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information collected during the review;

(D) A certification that all information collected during the review was reviewed and evaluated in accordance with the Contractor's personnel policies; and

(E) The results of the test for illegal drugs.

(i) *Criminal liability.* It is understood that disclosure of any classified information

relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et seq.*; 18 U.S.C. 793 and 794).

(j) *Foreign ownership, control, or influence.*

(1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, *Certificate Pertaining to Foreign Interests*, executed prior to award of this contract. The Contractor will submit the Foreign Ownership, Control or Influence (FOCI) information in the format directed by DOE. When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer.

(2) If a Contractor has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

(3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control, or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to protect any classified information or special nuclear material.

(4) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to foreign ownership, control, or influence and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the foreign ownership, control, or influence problem.

(k) *Employment announcements.* When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal government may be required

to obtain an access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR part 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.

(l) *Flow down to subcontracts.* The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under its contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require such subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, *Certificate Pertaining to Foreign Interests*, as required in 48 CFR 952.204-73, Facility Clearance, and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean subcontractor and the term "contract" shall mean subcontract.

**CLAUSE I.112 - 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.

**CLAUSE I.113 - 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 policies or without adversely impacting its performance to continue performance of the work under this contract as a result of such notification. If the Contractor elects to terminate performance, the provisions of this contract regarding termination for the convenience of the Government shall apply.

(b) The provisions of this clause shall be included in any subcontracts which may involve making unclassified information about nuclear technology available to sensitive foreign nations.

**CLAUSE I.114 - DEAR 952.204-72 DISCLOSURE OF INFORMATION (APR 1994)**

(a) It is mutually expected that the activities under this contract will not involve classified information. It is understood, however, that if in the opinion of either party, this expectation changes prior to the expiration or terminating of all activities under this contract, said party shall notify the other party accordingly in writing without delay. In any

event, the contractor shall classify, safeguard, and otherwise act with respect to all classified information in accordance with applicable law and the requirements of DOE, and shall promptly inform DOE in writing if and when classified information becomes involved, or in the mutual judgment of the parties it appears likely that classified information or material may become involved. The contractor shall have the right to terminate performance of the work under this contract and in such event the provisions of this contract respecting termination for the convenience of the Government shall apply.

(b) The contractor shall not permit any individual to have access to classified information except in accordance with the Atomic Energy Act 1954, as amended, Executive Order 12356, and DOE's regulations or requirements.

(c) The term "Restricted Data" as used in this article means all data concerning the design, manufacture, or utilization of atomic weapons, the production of special nuclear material or the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended.

**CLAUSE I.115 - 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 established DOE procedures for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.

(e) Unless prohibited by law, and in accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of communications or contacts with Members of Congress

relating to the effort performed under the contract.

(f) In accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the contract.

(g) In releases of information to the public and news media, the Contractor must fully and accurately identify the Contractor's relationship to the Department and fully and accurately credit the Department for its role in funding programs and projects resulting in scientific, technical, and other achievements.

**CLAUSE I.116 - 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 or other related computer equipment owned by, leased, or operated on behalf of the DOE.

(2) Individual means a DOE Contractor or subcontractor employee, or any other person who has been granted access to a DOE computer or to information on a DOE computer, and does not include a member of the public who sends an e-mail message to a DOE computer or who obtains information available to the public on DOE Web sites.

(b) Access to DOE computers. A Contractor shall not allow an individual to have access to information on a DOE computer unless—

(1) The individual has acknowledged in writing that the individual has no expectation of privacy in the use of a DOE computer; and

(2) The individual has consented in writing to permit access by an authorized investigative agency to any DOE computer used during the period of that individual's access to information on a DOE computer, and for a period of three years thereafter.

(c) No expectation of privacy. Notwithstanding any other provision of law (including any provision of law enacted by the Electronic Communications Privacy Act of 1986), no individual using a DOE computer shall have any expectation of privacy in the use of that computer.

(d) Written records. The Contractor is responsible for maintaining written records for itself and subcontractors demonstrating compliance with the provisions of paragraph (b) of this section. The Contractor agrees to provide access to these records to the DOE, or its authorized agents, upon request.

(e) Subcontracts. The Contractor shall insert this clause, including this paragraph (e), in subcontracts under this contract that may provide access to computers owned, leased or operated on behalf of the DOE.

**CLAUSE I.117 - 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.

**CLAUSE I.118 - DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009) ALTERNATE I (AUG 2009)**

(a) Purpose. The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity.

For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Contractor's Work Product.

(i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Contractor's performance of work under this contract for a period of 3 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.

**CLAUSE I.119 - 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.

**CLAUSE I.120 - DEAR 952.215-70 KEY PERSONNEL (DEC 2000)**

(a) The personnel listed in Section J, Appendix E 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 48 CFR 970.5203-3, Contractor's Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.

(b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

**CLAUSE I.121 - 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, 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 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.

**CLAUSE I.122 - DEAR 952.242-70 TECHNICAL DIRECTION (DEC 2000)**

(a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:

(1) Providing direction to the contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.

(2) Providing written information to the contractor that assists in interpreting drawings, specifications, or technical portions of the work description.

(3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the contractor to the Government.

(b) The contractor will receive a copy of the written COR designation from the contracting officer. It will specify the extent of the COR's authority to act on behalf of the contracting officer.

(c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that:

(1) Constitutes an assignment of additional work outside the Statement of Work;

(2) Constitutes a change as defined in the contract clause entitled "Changes;"

(3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions or specifications of the contract; or

(5) Interferes with the contractor's right to perform the terms and conditions of the contract.

(d) All technical direction shall be issued in writing by the COR.

(e) The contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the contractor, any instruction or direction by the COR falls within one of the categories defined in (c) (1) through (c)(5) of this clause, the contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the contractor, the Contracting Officer must:

(1) Advise the contractor in writing within thirty (30) days after receipt of the contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;

(2) Advise the contractor in writing within a reasonable time that the Government will issue a written change order; or

(3) Advise the contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.

(f) A failure of the contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled "Disputes."

**CLAUSE I.123 - DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (AUG 2016)**

(a) Authority. This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)

(b) Definitions. The definitions set out in the Act shall apply to this clause.

(c) Financial protection. Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.

(d)(1) Indemnification. To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e)(1) Waiver of defenses. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.



(2) In the event of an extraordinary nuclear occurrence which—

(i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

(ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or

(iii) Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or

(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive—

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to—

(1) Negligence;

(2) Contributory negligence;

(3) Assumption of risk; or

(4) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

(B) Any issue or defense as to charitable or governmental immunity; and

(C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.

(vi) For the purposes of that determination, offsite as that term is used in 10 CFR part 840 means away from “the contract location” which phrase means any DOE

facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.

(3) The waivers set forth above—

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

(vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and

(viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) Notification and litigation of claims. The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Contractor or other person

indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this contract.

(h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

(i) Civil penalties. The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.

(j) Criminal penalties. Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.

(k) Inclusion in subcontracts. The Contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

(l) EFFECTIVE DATE: This indemnity agreement shall be applicable with respect to nuclear incidents occurring on or after January 1, 2025.

**CLAUSE I.124 - 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

**CLAUSE I.125 - DEAR 970.5203-1 MANAGEMENT CONTROLS (JUN 2007) (SC ALTERNATE) (APR 2018) (DEVIATION) (PF 2022-23) (OCT 2021)**

(a) 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 by contractor management to reasonably ensure that:

- (1) Mission and functions assigned to the contractor are properly executed;
- (2) Systems and controls employed by the contractor are documented and satisfactory to DOE;
- (3) All levels of management are accountable for effective management systems and internal controls within their areas of assigned responsibility;
- (4) Provide reasonable assurance that Government resources are safeguarded against theft, fraud, waste, and unauthorized use;
- (5) Promote work and worker safety;
- (6) Promote efficient and effective operations including consideration of outsourcing of functions;
- (7) Reduce or eliminate operational risks to Government facilities;
- (8) All obligations and costs incurred are allowable in accordance with the intended purposes and the terms and conditions of the contract;
- (9) All revenues, expenditures, transactions and assets are properly record, manage, and report;
- (10) Financial, statistical and other necessary reports are maintained in an accurate, reliable, and timely manner, with proper accountability and management controls;
- (11) Systems are periodically reviewed to provide reasonable assurance that the objectives of the systems are being accomplished and that its controls are working effectively
- (12) 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;

(13) 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; and

(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.

(c) On an annual basis, the Contractor through an officer at a level above the Laboratory Director, shall submit an assurance to the Contracting Officer that the system of management controls, including all systems revised in accordance with the Special Contract Requirements H clause of this Contract, entitled, "Application of DOE Contractor Requirements Documents", is adequate to assure that the objectives of the management system are being accomplished and that the system and controls are effective and efficient."

**CLAUSE I.126 - 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.

**CLAUSE I.127 - DEAR 970.5203-3 CONTRACTOR'S ORGANIZATION (DEC 2000)**

(a) *Organization chart.* As promptly as possible after the execution of this contract, the Contractor shall furnish to the Contracting Officer a chart showing the names, duties, and organization of key personnel (see 48 CFR 952.215-70) to be employed in connection with the work, and shall furnish supplemental information to reflect any changes as they occur.

(b) *Supervisory representative of Contractor.* Unless otherwise directed by the Contracting Officer, a competent full-time resident supervisory representative of the Contractor satisfactory to the Contracting Officer shall be in charge of the work at the site, and any work off-site, at all times.

(c) *Control of employees.* The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be inimical to the Department's mission, the contracting officer may require, with the approval of the Secretary of Energy, the contractor to remove the employee from work under the contract. This includes the right to direct the contractor to remove its most senior key person from work under the contract for serious contract performance deficiencies.

(d) *Standards and procedures.* The contractor shall establish such standards and procedures as are necessary to implement the requirements set forth in 48 CFR 970.0371. Such standards and procedures shall be subject to the approval of the contracting officer.

**CLAUSE I.128 - DEAR 970.5204-2 LAWS, REGULATIONS AND DOE DIRECTIVES (DEC 2000) (DEVIATION) (MAY 2018) (SC ALTERNATE) (SEPT 2018)**

(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 [unless and until such time as an alternative procedure, standard, system of oversight, or assessment mechanism resulting from the process described in the Section H clause of this Contract, entitled, "Application of DOE Contractor Requirements Documents" is approved]. Except as otherwise provided for in paragraph (c) 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.

(c) The Contractor shall procure all necessary permits or licenses required for the performance of work under this contract separately, or jointly with DOE as co-permittees, as appropriate.

(d) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.

**CLAUSE I.129 - DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (OCT 2014) (DEVIATION: PF 2015-23)**

(a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract, including records series described within the contract as Privacy Act systems of records, shall be the property of the Government and shall be maintained in accordance with 36 Code of Federal Regulations (CFR), Chapter XII, -- Subchapter B, "Records Management." The contractor shall ensure records classified as Privacy Act system of



records are maintained in accordance with FAR 52.224.2 "Privacy Act."

(b) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause.

(1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except those records described by the contract as being operated and maintained by the Contractor in Privacy Act system of records.

(2) Confidential contractor financial information, internal corporate governance records and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);

(3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3 are described as the property of the Government; and

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

(5) The following categories of records maintained pursuant to the technology transfer clause of this contract:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

(ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

(c) Contract completion or termination. Upon contract completion or termination, the contractor shall ensure final disposition of all Government-owned records to a Federal

Record Center, the National Archives and Records Administration, to a successor contractor, its designee, or other destinations, as directed by the Contracting Officer. Upon the request of the Government, the contractor shall provide either the original contractor-owned records or copies of the records identified in paragraph (b) of this clause, to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act) as appropriate. If the contractor chooses to provide its original contractor-owned records to the Government or its designee, the contractor shall retain future rights to access and copy such records as needed.

(d) Inspection, copying, and audit of records. All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Contracting Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(e) Applicability. This clause applies to all records created, received and maintained by the contractor without regard to the date or origination of such records including all records acquired from a predecessor contractor.

(f) Records maintenance and retention. Contractor shall create, maintain, safeguard, and disposition records in accordance with 36 Code of Federal Regulations (CFR), Chapter XII, -- Subchapter B, "Records Management" and the National Archives and Records Administration (NARA)-approved Records Disposition Schedules. Records retention standards are applicable for all classes of records, whether or not the records are owned by the Government or the contractor. The Government may waive application of the NARA-approved Records Disposition Schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies of records described in paragraph (b) and delivery of records described in paragraph (a) of this clause.

(g) Subcontracts.

(1) The contractor shall include the requirements of this clause in all subcontracts that contain the *Radiation Protection and Nuclear Criticality* clause at 952.223-72, or whenever an on-site subcontract scope of work (i) could result in potential exposure to: A) radioactive materials; B) beryllium; or C) asbestos or (ii) involves a risk associated with chronic or acute exposure to toxic chemicals or substances or other hazardous materials that can cause adverse health impacts, in accordance with 10

CFR part 851. In determining its flow- down responsibilities, the Contractor shall include the requirements of this clause in all on-site subcontracts where the scope of work is performed in: (A) Radiological Areas and/or Radioactive Materials Areas (as defined at 10 CFR 835.2); (B) areas where beryllium concentrations exceed or can reasonably be expected to exceed action levels specified in 10 CFR 850; (C) an Asbestos Regulated area (as defined at 29 CFR 1926.1101 or 29 CFR 1910.1001); or (D) a workplace where hazard prevention and abatement processes are implemented in compliance with 10 CFR 851.21 to specifically control potential exposure to toxic chemicals or substances or other hazardous materials that can cause long term health impacts.

(2) The Contractor may elect to take on the obligations of the provisions of this clause in lieu of the subcontractor, and maintain records that would otherwise be maintained by the subcontractor.

**CLAUSE I.130 - 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.

**CLAUSE I.131 - DEAR 970.5215-1 TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT (DEC 2000) (ALTERNATES II AND III) (DEC 2000) (DEVIATION)**

(a) *Total available fee.* Total available fee, consisting of a base fee amount (which may be zero) and a performance fee amount (consisting of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both) determined in accordance with the provisions of this clause, is available for payment in accordance with the clause of this contract entitled, "Payments and advances."

(b) *Fee Negotiations.* Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon and, if exceeding one year, approved by the Senior Procurement Executive, or designee, the contracting officer and Contractor shall enter into negotiation of the requirements for the year or appropriate period, including the evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. The contracting officer shall modify this contract at the conclusion of each negotiation to reflect the negotiated requirements, evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. In the event the parties fail to agree on the requirements, the evaluation areas and individual requirements subject to incentives, the total available fee, or the allocation of fee, a unilateral determination will be made by the contracting officer. The total available fee amount shall be allocated to a twelve month cycle composed of one or more evaluation periods, or such longer period as may be mutually agreed to between the parties and approved by the Senior Procurement Executive, or designee.

(c) *Determination of Total Available Fee Amount Earned.*

(1) The Government shall, at the conclusion of each specified evaluation period, evaluate the contractor's performance of all requirements, including performance

based incentives completed during the period, and determine the total available fee amount earned. At the contracting officer's discretion, evaluation of incentivized performance may occur at the scheduled completion of specific incentivized requirements.

(2) The DOE Operations/Field Office Manager, or designee, will be the Manager, Fermi Site Office. The contractor agrees that the determination as to the total available fee earned is a unilateral determination made by the Head of Contracting Activity, or designee.

(3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation and Measurement Plan(s) described in subparagraph (d) of this clause unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the fee determination, and the basis of the fee determination. In the event that the contractor's performance is considered to be less than the level of performance set forth in the Statement of Work, as amended to include the current Work Authorization Directive or similar document, for any contract requirement, it will be considered by the DOE Operations/Field Office Manager, or designee, who may at his/her discretion adjust the fee determination to reflect such performance. Any such adjustment shall be in accordance with the clause entitled, "Conditional Payment of Fee, Profit, or Incentives" if contained in the contract.

(4) Award fee not earned during the evaluation period shall not be allocated to future evaluation periods.

(d) *Performance Evaluation and Measurement Plan(s)*. To the extent not set forth elsewhere in the contract:

(1) The Government shall establish a Performance Evaluation and Measurement Plan(s) upon which the determination of the total available fee amount earned shall be based. The Performance Evaluation and Measurement Plan(s) will address all of the requirements of contract performance specified in the contract directly or by reference. A copy of the Performance Evaluation and Measurement Plan(s) shall be provided to the Contractor:

(i) prior to the start of an evaluation period if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been mutually agreed to by the parties; or

(ii) not later than thirty days prior to the scheduled start date of the evaluation period, if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been unilaterally established by the contracting officer.

(2) The Performance Evaluation and Measurement Plan(s) will set forth the criteria

upon which the Contractor will be evaluated relating to any technical, schedule, management, and/or cost objectives selected for evaluation. Such criteria should be objective, but may also include subjective criteria. The Plan(s) shall also set forth the method by which the total available fee amount will be allocated and the amount earned determined.

(3) The Performance Evaluation and Measurement Plan(s) may, consistent with the contract statement of work, be revised during the period of performance. The contracting officer shall notify the contractor:

(i) of such unilateral changes at least ninety calendar days prior to the end of the affected evaluation period and at least thirty calendar days prior to the effective date of the change;

(ii) of such bilateral changes at least sixty calendar days prior to the end of the affected evaluation period; or

(iii) if such change, whether unilateral or bilateral, is urgent and high priority, at least thirty calendar days prior to the end of the evaluation period.

(e) *Schedule for total available fee amount earned determinations.* The DOE Operations/Field Office Manager, or designee, shall issue the final total available fee amount earned determination in accordance with: the schedule set forth in the Performance Evaluation and Measurement Plan(s); or as otherwise set forth in this contract. However, a determination must be made within sixty calendar days after the receipt by the contracting officer of the Contractor's self-assessment, if one is required or permitted by paragraph (f) of this clause, or seventy calendar days after the end of the evaluation period, whichever is later, or a longer period if the Contractor and contracting officer agree. If the contracting officer evaluates the Contractor's performance of specific requirements on their completion, the payment of any earned fee amount must be made within seventy calendar days (or such other time period as mutually agreed to between the contracting officer and the Contractor) after such completion. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the Federal Register semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of fee earned and be subject to interest if not paid in the succeeding 30-day period.

(f) *Contractor self-assessment.* Following each evaluation period, the Contractor shall submit a self-assessment within 45 calendar days after the end of the period. This self-

assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The DOE Operations/Field Office Manager, or designee, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the Contractor's management during the period. A self-assessment, in and of itself may not be the only basis for the award fee determination.

**CLAUSE I.132 - DEAR 970.5215-3 CONDITIONAL PAYMENT OF FEE, PROFIT, OR INCENTIVES-FACILITY MANAGEMENT CONTRACTS (AUG 2009)**

(a) *General.*

(1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon -

(i) The Contractor's or Contractor employees' compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H), which includes worker safety and health (WS&H), including performance under an approved Integrated Safety Management System (ISMS); and

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

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

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

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

(b) *Reduction amount.*

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

(2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26 percent nor greater than 100 percent of the amount of earned fee, fixed fee, profit, or the Contractor's share of cost savings for a first degree performance failure, not less than 11 percent nor greater than 25 percent for a second degree performance failure, and up to 10 percent for a third degree performance failure.

(3) In determining the amount of the reduction and the applicability of mitigating factors, the contracting officer must consider the Contractor's overall performance in meeting the ES&H or security requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range (see 48 CFR 970.1504-1-2). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ES&H only).

(i) Degree of control the Contractor had over the event or incident.

(ii) Efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of: ES&H and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ES&H standards are routinely practiced (e.g., Voluntary Protection Program, ISO 14000).

(vi) Event caused by "Good Samaritan" act by the Contractor (e.g., offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs). \* \* \*



(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.

(4)

(i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a contractor during an evaluation period may be reduced in accordance with this clause if it is determined that a performance failure warranting a reduction under this clause occurs within the evaluation period.

(ii) The amount of reduction under this clause, in combination with any reduction made under any other clause in the contract, shall not exceed the amount of fee, fixed fee, profit, or the Contractor's share of cost savings that is otherwise earned during the evaluation period.

(iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by the Contracting Officer or fee determination official as otherwise payable based on the Contractor's performance during the evaluation period. Where the contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.

(iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practical after becoming aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the Contractor has received for fee, fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned (provisionally or otherwise), the Contractor shall immediately return the excess to the Government. (What the Contractor "has earned" reflects any reduction made under this or any other clause of the contract.)

(v) At the end of the contract -

(A) The Government will pay the Contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned exceeds the sum of the payments the Contractor has received; or

(B) The Contractor shall return to the Government the amount by which the sum of the payments the Contractor has received exceeds the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned. (What the Contractor "has earned" reflects any reduction made under this or any other clause of the contract.)

(c) *Environment, Safety and Health (ES&H)*. Performance failures occur if the Contractor does not comply with the contract's ES&H terms and conditions, including the DOE approved Contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:

(1) *First Degree*: Performance failures that are most adverse to ES&H. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the Contractor's ISMS. The following performance failures or performance failures of similar import will be considered first degree.

(i) Type A accident (defined in DOE Order 225.1B, or successor version).

(ii) Two Second Degree performance failures during an evaluation period.

(2) *Second Degree*: Performance failures that are significantly adverse to ES&H. They include failures to comply with an approved ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. They also include breakdowns of the Safety Management System. The following performance failures or performance failures of similar import will be considered second degree:

(i) Type B accident (defined in DOE Order 225.1B, or successor version).

(ii) Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.

(iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.

(3) *Third Degree*: Performance failures that reflect a lack of focus on improving ES&H. They include failures to comply with an approved ISMS that result in potential breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:

(i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal)

oversight and/or reported per DOE Order 232.1-2 requirements; or internal oversight of DOE Order 440.1A requirements.

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

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

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

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

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

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

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

information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

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

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

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (d)(1)(iii) of this clause).

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

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

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

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

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

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

**CLAUSE I.133 - DEAR 970.5216-7 ALLOWABLE COST AND PAYMENT (OCT 2021) (DEVIATION) (PF 2022-23) (OCT 2021)**

(a) Invoicing.

(1) The Government will make payments to the Contractor per DEAR 970.5232-2, "Payments and advances." The payments will only be for amounts determined to be allowable by the Contracting Officer in accordance with the: Federal Acquisition Regulation (FAR) subpart 31.2 in effect on the date of this contract; the Department of Energy Acquisition Regulation subpart 970.31 in effect on the date of this contract; and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(b) Reimbursing costs.

(1) The Government will make payments to the Contractor per DEAR 970.5232-2, "Payments and advances." The payments will only be for allowable costs. For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only—

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for-

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—

(1) In accordance with the terms and conditions of a subcontract or invoice; and

(2) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government (the Government will make payments to the Contractor per DEAR 970.5232-2, "Payments and advances");

(B) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless-

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) *Small business concerns.* The Government will make payments to the Contractor per DEAR 970.5232-2, "Payments and advances."

(d) Final indirect cost rates.

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2)

(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(iii) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant Federal agency official:

(A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate.

(B) *General and Administrative expenses (final indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts).

(C) *Overhead expenses (final indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool.

(D) *Occupancy expenses (intermediate indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools.

(E) Claimed allocation bases, by element of cost, used to distribute indirect costs.

(F) Facilities capital cost of money factors computation.

(G) Reconciliation of books of account (*i.e.*, General Ledger) and claimed direct costs by major cost element.

(H) Schedule of direct costs by contract and subcontract and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts.

(I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract.

(J) *Subcontract information.* Listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contact information).

(K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.

(L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution.

(M) Listing of decisions/agreements/approvals and description of accounting/organizational changes.

(N) Certificate of final indirect costs (see 52.242-4, Certification of Final Indirect Costs).

(O) Contract closing information for contracts physically completed in this fiscal year (include contract number, period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close).

(iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:

(A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.

(B) General organizational information and limitation on allowability of compensation for certain contractor personnel. See 31.205-6(p). Additional salary reference information is available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedBeforeJune24.pdf> and <https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedAfterJune24.pdf>



(C) Identification of prime contracts under which the contractor performs as a subcontractor.

(D) Description of accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year's submission).

(E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changed from the previous year's submission).

(F) Certified financial statements and other financial data (e.g., trial balance, compilation, review, etc.).

(G) Management letter from outside CPAs concerning any internal control weaknesses.

(H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (G) of this section.

(I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.

(J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate submission is made.

(K) Federal and State income tax returns.

(L) Securities and Exchange Commission 10-K annual report.

(M) Minutes from board of directors meetings.

(N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.

(O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.

(v) The Contractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this section, within 60 days after settlement of final indirect cost rates.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request.

(6)

(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may-

(A) Determine the amounts due to the Contractor under the contract; and

(B) Record this determination in a unilateral modification to the contract.

(ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

(e) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates-

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be-

(1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(h) Final payment. The Government will make final payment to the Contractor per DEAR 970.5232-2, "Payments and advances."

**CLAUSE I.134 - 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 in accordance with the standards, policies, and procedures that apply to performance under this contract, including but not limited to environmental, safety and health, security, safeguards and classification procedures, and human and animal research regulations;

(8) May subcontract portion(s) of a Work for Others project; however, the Contractor must select the subcontractor and the work to be subcontracted. Any subcontracted work must be in direct support of the DOE Contractor's performance as defined in the DOE approved Strategic Partnership Projects proposal package; and,

(9) Must maintain a summary listing of project information for each active Strategic

Partnership Projects project, consisting of –

- (i) Sponsoring agency;
- (ii) Total estimated costs;
- (iii) Project title and description; (iv) Project point of contact; and,
- (v) Estimated start and completion dates.

(d) *Negotiation and execution of Strategic Partnership Projects agreement.*

(1) When delegated authority by the Contracting Officer, the Contractor may negotiate the terms and conditions that will govern the performance of a specific Strategic Partnership Projects project. Such terms and conditions must be consistent with the terms, conditions, and requirements of the Contractor's contract with DOE. The Contractor may use DOE- approved contract terms and conditions as delineated in DOE Manual 481.1-1A or terms and conditions previously approved by the responsible Contracting Officer or authorized designee for agreements with non-Federal entities. The Contractor must not hold itself out as representing DOE when negotiating the proposed Strategic Partnership Projects agreement.

(2) The Contractor must submit all Strategic Partnership Projects agreements to the DOE Contracting Officer for DOE review and approval. The Contractor may not execute any proposed agreement until it has received notice of DOE approval.

(e) *Preparation of project proposals.* When the Contractor proposes to perform Strategic Partnership Projects activities pursuant to this clause, it may assist the project sponsor in the preparation of project proposal packages including the preparation of cost estimates.

(f) *Strategic Partnership Projects appraisals.* DOE may conduct periodic appraisals of the Contractor's compliance with its Strategic Partnership Projects Program policies, practices and procedures. The Contractor must provide facilities and other support in conjunction with such appraisals as directed by the Contracting Officer or authorized designee.

(g) *Annual Strategic Partnership Projects report.* The Contractor must provide assistance as required by the Contracting Officer or authorized designee in the preparation of a DOE Annual Summary Report of Strategic Partnership Projects Activities under the contract.

**CLAUSE I.135 - 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.

**CLAUSE I.136 - DEAR 970.5222-2 OVERTIME MANAGEMENT (DEC 2000) (SC ALTERNATE) (APR 2018)**

(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%.

**CLAUSE I.137 - 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.

**CLAUSE I.138 - 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.

**CLAUSE I.139 - DEAR 970.5223-7 SUSTAINABLE ACQUISITION PROGRAM (OCT 2010) (SC ALTERNATE) (SEP 2018)**

(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) Greenhouse gas emission inventories are required, including Scope 3 emissions which include contractor emissions. These are discussed at Section 13 of Executive Order 13514 which can be found at <http://www.archives.gov/federal-register/executive-orders/disposition.html>.

(7) Non-Ozone Depleting Alternative Products are at <http://www.epa.gov/ozone/strathome.html>.

(8) Water efficient plumbing products are at <http://epa.gov/watersense>.

(c) The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming products, and 52.223-17 Affirmative procurement of EPA- Designated items in Service and Construction Contracts, require the use of products that have biobased content, are energy efficient, or have recycled content. To the extent that the services provided by the Contractor require provision of any of the above types of products, the Contractor must provide the energy efficient and environmentally sustainable type of product unless that type of product—

(1) Is not available;

(2) Is not life cycle cost effective (or does not exceed 110% of the price of alternative items if life cycle cost data is unavailable), EPEAT is an example of lifecycle costs that have been analyzed by DOE and found to be acceptable at the silver and gold level;

(3) Does not meet performance needs; or,

(4) Cannot be delivered in time to meet a critical need.

(d) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, (<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 offer significant subcontracting opportunities for energy efficient or environmentally sustainable products or services in the materials selection process. The Subcontractor is not required to 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.

(i) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "Subcontractor."

**CLAUSE I.140 - DEAR 970.5225-1 COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS (EXPORT CLAUSE) (NOV 2015)**

(a) The Contractor shall comply with all applicable U.S. export control laws and regulations.

(b) The Contractor's responsibility to comply with all applicable laws and regulations exists independent of, and is not established or limited by, the information provided by this clause.

(c) Nothing in the terms of this contract adds to, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive Orders, and regulations, including but not limited to -

- (1) The Atomic Energy Act of 1954, as amended;
- (2) The Arms Export Control Act (22 U.S.C. 2751 *et seq.*);
- (3) The Export Administration Act of 1979 (50 U.S.C. app. 2401 *et seq.*), as continued under the International Emergency Economic Powers Act (Title II of Pub. L. 95-223, 91 Stat. 1626, October 28, 1977; 50 U.S.C. 1701 *et seq.*);
- (4) Trading with the Enemy Act (50 U.S.C. App. 5(b), as amended by the Foreign Assistance Act of 1961);
- (5) Assistance to Foreign Atomic Energy Activities (10 CFR part 810);
- (6) Export and Import of Nuclear Equipment and Material (10 CFR part 110);
- (7) International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130);
- (8) Export Administration Regulations (EAR) (15 CFR parts 730 through 774);  
and
- (9) Regulations administered by the Office of Foreign Assets Control (31 CFR parts 500 through 598).

(d) In addition to the Federal laws and regulations cited above, National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical, and Engineering Information establishes a national policy that, to the maximum extent possible, the products of fundamental research shall remain unrestricted. NSDD 189 provides that no restrictions may be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided in applicable U.S. statutes. As a result, contracts confined to the performance of unclassified fundamental research generally do not involve any export-controlled activities.

NSDD 189 does not take precedence over statutes. NSDD 189 does not exempt any research from statutes that apply to export controls such as the Atomic Energy Act, as amended; the Arms Export Control Act; the Export Administration Act of 1979, as amended; or the U.S. International Emergency Economic Powers Act; or the regulations that implement those statutes (*e.g.*, the ITAR, the EAR, 10 CFR part 110 and 10 CFR part 810). Thus, if items (*e.g.*, commodities, software or technologies) that are controlled by U.S. export control laws or regulations are used to conduct research or are

generated as part of the research efforts, the export control laws and regulations apply to the controlled items.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all solicitations and subcontracts.

**CLAUSE I.141 - 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. By February 1 of each fiscal year, DOE will issue its guidance to the Contractor for the annual Diversity Plan for the fiscal year. The Contractor shall submit its annual Diversity Plan to DOE no later than April 16 of each year. The Plan shall include innovative strategies for increasing opportunities to fully use the talents and capabilities of a diverse work force. The Plan shall address, at a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force, (2) educational outreach, (3) community involvement and outreach, (4) subcontracting, (5) economic development (including technology transfer), and (6) the prevention of profiling based on race or national origin.

**CLAUSE I.142 - DEAR 970.5227-2 RIGHTS IN DATA-TECHNOLOGY TRANSFER (DEC 2000) (DEVIATION) (AL 2021-04)**

(a) *Definitions.*

*Assistant General Counsel for Technology Transfer and Intellectual Property* is the senior intellectual property counsel for the Department of Energy, as distinguished from the NNSA Patent Counsel, and, where used in this clause, indicates that the authority for the activity(ies) being described belongs to DOE.

*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.

*Computer software*, as used in this clause, means (1) 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 (2) 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.

*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.

*Department of Energy (DOE)*, as used in this clause, includes the National Nuclear Security Administration (NNSA), unless otherwise identified or indicated.

*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.

*Open source software*, as used in this clause, means computer software with its source code that is distributed under a license in which the user is granted the right to use, copy, modify, and prepare derivative works thereof, without having to make royalty payments.

*Patent Counsel* means the DOE or NNSA Patent Counsel assisting the contracting activity.

*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.

*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.

*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.

(b) Allocation of Rights.

1) Except as may be otherwise expressly provided or directed in writing by the 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 first produced or 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 Patent Counsel, in appropriate instances of the DOE Strategic Partnership Projects (SPP)

Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this contract delivered to the Government or otherwise disposed of by the contractor, either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this contract. When delivering all contractor-produced computer software to the DOE Office of Scientific and Technical Information (OSTI), the Contractor shall submit a complete package as prescribed in paragraph (e)(3) of this section. 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 concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in provisions of this clause;

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data; and

(iii) The right to assert copyright subsisting in scientific and technical works,

and works produced by Contractor under DEAR 952.204-75 as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information which it receives from, or is given access to by DOE or a third party, including a DOE contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(4) In the performance of DOE contracted obligations, each Contractor is required to manage scientific and technical information (STI) produced under the contract as a direct and integral part of the work and ensure its broad availability to all customer segments by making STI available to DOE's central STI coordinating office, OSTI. Requirements for all such reportable information to OSTI are in DOE Order 241.1B, or successor version, whether it is publicly releasable, controlled unclassified information, or classified.

(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), (e), or (f) of this clause.

(2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with paragraphs (d), (e) or (f) 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.

(3) If the Contractor has not been granted permission to copyright data or computer software first produced under the contract where such permission is necessary, i.e., for works other than scientific and technical journal articles and data produced under a CRADA, and if the Government desires to obtain copyright in such



data or computer software, the Patent Counsel may direct the Contractor to establish claim to copyright in such data or computer software and to assign such copyright to the Government or its designated assignee.

(d) Copyrighted works (scientific and technical works).

(1) The Contractor shall have the right to assert, without prior approval of the Contracting Officer, copyright subsisting in scientific and technical works composed under this contract or based on or containing data first produced by the Contractor in the performance of this contract, and published in academic, technical or professional journals, symposia, proceedings, contributions to chapters of book compilations or similar means of dissemination to make broadly available to the public or scientific community for the purpose of scientific, research, knowledge and education. Such scientific and technical works may be recorded or fixed in any medium including but not limited to print, online, web, audio, video or other medium, and released or disseminated through any communication or distribution channel including but not limited to articles, reports, books, non-architectural drawings, repositories, videos, websites, workshops, or social media. 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) For each scientific or technical work first produced or composed under this contract and submitted for publication or similar means of dissemination, the contractor shall provide notice to the publisher of the Government's license in the copyright that is substantially similar to or otherwise references one of the following notices below:

A suitable notice (long version) reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright.

Notice: This work was produced by [insert the name of the Contractor] under Contract No. [insert the contract number] with the U.S. Department of Energy. The United States Government retains and the publisher, by accepting the work 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 work, or allow others to do so, for United States

Government purposes. The Department of Energy will provide public access to these results of federally sponsored research in accordance with the DOE Public Access Plan (<http://energy.gov/downloads/doe-public-access-plan>).

(End of notice)

A suitable notice (short version) reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright follows:

Notice: This work was produced by [insert the name of the Contractor] [insert the contract number] with the U.S. Department of Energy. Publisher acknowledges the U.S. Government license to provide public access under the DOE Public Access Plan (<http://energy.gov/downloads/doe-public-access-plan>).

(End of notice)

(3) The title to the copyright of the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the Contractor for additional compensation.

(e) Copyrighted works (other than scientific and technical works 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, when the Contractor needs to control distribution to advance the goals of the technology transfer mission and where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:

(1) Contractor request to assert copyright.

(i) Except for scientific and technical works under (d) above 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 software) 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 funding program under which it was funded;

(C) Whether, to the best knowledge of the Contractor, the data is subject to an international treaty or agreement;

(D) Whether the data is subject to export control;

(E) A statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled, "Technology Transfer Mission," within five (5) years after obtaining permission to assert copyright or, on a case-by-case basis, a specified longer period where the Contractor can demonstrate that the ability to commercialize effectively is dependent upon such longer period; and

(F) For data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization and is consistent with DOE's dissemination responsibilities.

(ii) For data that is developed using other funding sources in addition to DOE funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained;

(iii) Permission for the Contractor to assert copyright in excepted categories of data as determined exclusively by DOE will be expressly withheld. Such excepted categories include data whose release—

(A) Would be detrimental to national security, i.e., involve classified information or data or sensitive information under Section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes;

(B) Would not enhance the appropriate transfer or dissemination and commercialization of such data;

(C) Would have a negative impact on U.S. industrial competitiveness;

(D) Would prevent DOE from meeting its obligations under treaties and international agreements; or

(E) Would be detrimental to one or more of DOE's programs.

(iv) The Contractor will obtain the advanced written approval of the Patent Counsel to assert copyright where data are determined to be in the following excepted categories: (a) under export control restrictions; (b) developed with

Naval Reactors' funding; (c) subject to disposition of data rights under treaties and international agreements. Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property. Where data are determined to be under export control restriction, the Contractor may obtain permission to assert copyright subject to the provisions of this clause for purposes of limited commercialization in a manner that complies with export control statutes and applicable regulations. In addition, notwithstanding any other provision of this contract, all data developed with Naval Reactors' funding and those data that are classified fall within excepted categories. The rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified at DOE's Office of International Affairs (International Commitments—IEC).

(2) Patent Counsel Review and Response to Contractor's Request. The Patent Counsel shall use its best efforts to respond in writing within 60 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE's permission for the Contractor to assert copyright or advise the Contractor that DOE needs additional time to respond, and the reasons therefor. If Patent Counsel grants permission for the Contractor to assert copyright in computer software, the permission automatically extends to subsequent minor versions (e.g., minor revisions, patches and bug fixes) having the same funding source, same name and substantially same functionality as the original computer software, and may be extended to subsequent major versions representing significant modifications of the program with the approval of Patent Counsel.

(3) Permission for contractor to assert copyright.

(i) For computer software, the Contractor shall furnish, or make available to the DOE Office of Scientific and Technical Information (OSTI) in accordance with OSTI guidelines at the time permission to assert copyright is given under paragraph (e)(2) of this clause—

(A) Announcement information/metadata contained in the Software Announcement Notice 241.4;

(B) The source code and/or executable file for each software program;  
and

(C) Documentation, if any, which may consist of a user manual, sample test cases, or similar information, needed by a technically competent user to understand and use the software (whether included on the software media itself or provided in a separate file or in paper format).

(ii) The Contractor acknowledges that the DOE designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

(iii) Unless otherwise directed by the Patent Counsel, 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, or make available, to OSTI in accordance with OSTI guidelines, a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.

(iv) Once the Contractor is given permission to assert copyright in data, the Contractor may begin to commercialize the copyrighted data by making copyrighted data available for licensing to third parties and by offering other types of distribution to third parties. During the period in which commercialization activities pertaining to the copyrighted data are continuing, or for a specified period of time prescribed by Patent Counsel in paragraph (e)(2) above, 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. For all previously approved and current copyrighted data that the Contractor is actively commercializing, the Contractor may continue to commercialize in accordance with this paragraph.

(v) When the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright or at the end of the specified period as prescribed by Patent Counsel, 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.

(vi) At any time the Contractor abandons commercialization activities for copyrighted data, the Contractor shall advise OSTI and Patent Counsel and, upon request, assign the copyright to the Government so that the Government can distribute the copyrighted data to the public. When the Contractor abandons commercialization activities, the Contractor will provide to OSTI the latest version of the copyrighted data (for example, source code, object code, minimal support documentation, drawings or updated manuals.) In addition, the Contractor will provide annually to Patent Counsel, if requested, a list of all copyrighted data that

the Contractor has abandoned commercial licensing activity during that year.

(vii) 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)(iv) and (v) of this clause. Such action shall be taken when the data are delivered to the Government, licensed or deposited for registration as a published work in the U.S. Copyright Office, or when submitted for publication. The acknowledgment of Government sponsorship and license rights shall substantially similar to the following:

Notice: These data were produced by [insert name of Contractor] under Contract No. \_\_\_\_\_ with the Department of Energy. During the period of commercialization or such other time period specified by the Department of Energy, 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. Subsequent to that period 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 the Contractor or DOE. NEITHER THE UNITED STATES NOR THE UNITED STATES DEPARTMENT OF ENERGY, NOR ANY OF THEIR EMPLOYEES, MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS, OR USEFULNESS OF ANY DATA, APPARATUS, PRODUCT, OR PROCESS DISCLOSED, OR REPRESENTS THAT ITS USE WOULD NOT INFRINGE PRIVATELY OWNED RIGHTS.

(End of Notice)

(viii) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the period that Contractor is commercializing the data as provided for in paragraph (e)(3)(iv) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is

actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(i) of this clause. Before licensing under this subparagraph, DOE shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65— “Appeals”.

(ix) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE Program needs, except as expressly provided in writing by the Contracting Officer. The Contractor may use its net royalty income to effect such maintenance costs.

(4) The following notice may be included in computer software prior to any publication or release and prior to the Contractor's obtaining permission from the Department of Energy to assert copyright in the computer software pursuant to paragraph (c)(3) of this section.

Notice: This computer software was prepared by [insert the Contractor's name ]and insert the individual author], hereinafter the Contractor, under Contract [insert the Contract Number] with the Department of Energy (DOE). All rights in the computer software are reserved by DOE on behalf of the United States Government and the Contractor as provided in the Contract. You are authorized to use this computer software for Governmental purposes but it is not to be released or distributed to the public. NEITHER THE GOVERNMENT NOR THE CONTRACTOR MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LIABILITY FOR THE USE OF THIS SOFTWARE. This notice including this sentence must appear on any copies of this computer software.

(End of notice)

(5) A similar notice can be used for data, other than computer software, prior to any publication or release and prior to Contractor's obtaining permission of DOE Patent Counsel to assert copyright.

(f) Open software source. The Contractor may release computer software first produced by the Contractor in the performance of this contract under an open source software license. Such software shall hereinafter be referred to as open source software or OSS, subject to the following:

(1) DOE Program notice for copyright assertion for OSS.

(i) The Contractor shall provide written notice (including relevant data such as, for example, the software disclosure form) to each DOE Program or Programs that have provided a substantial portion of the funding (funding source(s)) to develop the software that the Contractor intends to release as OSS unless the funding Program(s) has previously provided blanket approval for all software developed with funding from that Program or a specific DOE project stipulates the software to be released as OSS. If Program has neither consented nor objected to the assertion of copyright within two weeks of such written notification, the Contractor may assert copyright in the software. If notification of a funding DOE Program(s) is not practicable or DOE Program(s) has objected, the Contractor shall consult with Patent Counsel, which may provide approval. For software developed under a technology transfer agreement (e.g., CRADA, SPP, or User Facility Agreement), authorization from the partner of the such agreement shall be additionally obtained for OSS release unless such agreement has a provision providing for such copyright assertion. (ii) If the software is developed with funding from a federal government agency or agencies (funding source(s)) other than DOE, then authorization from all the funding agency(ies) 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(ies). 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 approval from such federal government agency(ies) is not practicable, the Patent Counsel may provide approval instead.

(2) Assert copyright in the OSS. Once the Contractor has met the program approval requirements set forth in paragraph (f)(1) of this clause, copyright in the software to be distributed as OSS may be asserted by the Contractor, or, for OSS developed under a CRADA, User Facility Agreement, or SPP Agreement, either by the Contractor, CRADA Participant, User Facility User, or SPP Sponsor, as applicable, which precludes marking such OSS as protectable from public distribution.

(3) Submit Software Announcement Notice 241.4 to OSTI. The Contractor must submit Software Announcement Notice (AN) 241.4 (or the current notice as may be required by DOE) to OSTI. In the AN 241.4, the Contractor shall provide the unique URL (i.e. a persistent identifier) from which the software can be obtained so that OSTI can announce the availability of the OSS and the public has access via the URL.

(4) Maintain OSS record. The Contractor must maintain a record of all software distributed as OSS. Upon request of the Patent Counsel, the Contractor shall provide the necessary information regarding any or all OSS.



(5) Provide public access to the OSS. The Contractor shall ensure that the OSS is publicly accessible as open source via the Contractor's website, Open Source Bulletin Boards operated by third parties, DOE, or other standard industry methods.

(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 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. This provision may 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) *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 (f) and (g) of the clause within this contract entitled Technology Transfer Mission (48 CFR 970.5227-3). The requirement for the Contractor to request permission to assert copyright for the purpose of engaging in licensing software for royalties, as set forth elsewhere in this clause, is not modified by this section.

(8) *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.

(9) *Contractor abandons OSS.* If the Contractor ceases to make OSS publicly available, then the Contractor shall submit to OSTI the object code and source code of the latest version of the OSS developed by the Contractor in addition to a revised Announcement Notice 241.4 (which includes an abstract) and the Contractor shall direct any inquiries from third parties seeking to obtain the original OSS to OSTI.

(g) *Subcontracting.*

(1) Unless otherwise directed by the Patent Counsel, 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 DOE policy and procedures by using “Rights in Data-General” at 48 CFR 52.227–14 modified in accordance with 48 CFR 927.409 including alternates as appropriate with the prior approval of DOE Patent Counsel. 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 the 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(d). 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, the Contractor shall use the “rights in Data-Facilities clause at 48 CFR 970.5227-1.

(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. \_\_\_\_\_ with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;

(b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(End of notice)

(i) *Rights in restricted computer software.* (1) Except as may be otherwise specified in this contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this contract; provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government

except as provided in the “Restricted Rights Notice” set forth below. All such restricted computer software shall be marked with the following “Restricted Rights Notice.”

#### Restricted Rights Notice—Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No. \_\_\_\_\_. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

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

#### Restricted Rights Notice—Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. \_\_\_\_\_ with (name of Contractor).

(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, e.g. 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.

**CLAUSE I.143 - DEAR 970.5227-3 TECHNOLOGY TRANSFER MISSION (AUG 2002) (DEVIATION) (AL 2022-01)**

This clause has as its purpose implementation of the National Competitiveness Technology Transfer Act of 1989 (Sections 3131, 3132, 3133, and 3157 of Pub. L. 101-189 and as amended by Pub. L. 103-160, Sections 3134 and 3160). The Contractor shall conduct technology transfer activities with a purpose of providing benefit from Federal research to U.S. industrial competitiveness.

(a) *Authority.* (1) In order to ensure the full use of the results of research and development efforts of, and the capabilities of, the Laboratory, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Laboratory consistent with the policy, principles and purposes of Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a); Section 3132(b) of Pub. L. 101-189, Sections 3134 and 3160 of Pub. L. 103-160, and of Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.); Section 152 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2182); Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); Section 102 of the Laboratory Modernization and Technology Transfer Act (Public Law 115-246) and Executive Order 12591 of April 10, 1987.

(2) In pursuing the technology transfer mission, the Contractor is authorized to conduct activities including but not limited to: identifying and protecting intellectual property made, created or acquired at or by the Laboratory; negotiating licensing agreements and assignments for intellectual property made, created or acquired at or by the Laboratory that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Strategic Partnership Projects (SPP); providing information exchanges; and making available laboratory or weapon production user facilities. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, SPP, science education activities, consulting, personnel exchanges, assignments, and licensing in accordance with this clause.

(3) *Trademarks and service marks.* The Contractor, with notification to DOE Patent Counsel, is authorized to protect goods/services resulting from work at the Laboratory through Trademark and Service Mark protection. The Laboratory name and associated logos are owned by the Department of Energy unless an exception is allowed by the DOE Patent Counsel, and shall be protected by DOE Patent Counsel. In furtherance of the technology transfer mission, should the Contractor want to assert trademark or service mark protection for any word, phrase, symbol, design, or combination thereof that includes or is associated with the Laboratory name, the Contractor must first notify and obtain permission from the Department of Energy Patent Counsel. All marks, whether or not registered with the United States Patent and Trademark Office, are to be included in the "Intellectual property rights" paragraph (i) of this clause, below, regarding transfer to successor contractor, DOE reserves the right to require the Contractor to cancel registration of the mark or cease use of the mark.

*(b) Definitions.*

*Assignment* means any agreement by which the Contractor transfers ownership of Laboratory Intellectual Property, subject to the Government's retained rights.

*Bailment* means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of Laboratory Biological Materials or Laboratory Tangible Research Product for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.

*Contractor's Laboratory Director* means the individual who has supervision over all or substantially all of the Contractor's operations at the Laboratory.

*Cooperative Research and Development Agreement (CRADA)* means any agreement entered into between the Contractor as operator of the Laboratory, and one or more parties including at least one non-Federal party under which the Government, through its laboratory, provides personnel, services, facilities, equipment, intellectual

property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Laboratory; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31 of the United States Code.

*Department of Energy (DOE)*, as used in this clause, includes the National Nuclear Security Administration (NNSA), unless otherwise identified or indicated.

*Intellectual property* means data, inventions, patents, patent applications, trademarks, service marks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.

*Joint Work Statement (JWS)* means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's Laboratory Director or designee which describes the project.

*Laboratory biological materials* means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products, made under this contract by Laboratory employees or through the use of Laboratory research facilities.

*Laboratory tangible research product* means tangible material results of research which--

- (1) Are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility;
- (2) Are not materials generally commercially available; and
- (3) Were made under this contract by Laboratory employees or through the use of Laboratory research facilities.

*Patent Counsel* means the DOE or NNSA Patent Counsel assisting the contracting activity. The Patent Counsel is the first and primary point of contact for activities described in this clause.

*Strategic Partnership Projects (SPP)* means any agreement pursuant to the SPP clause, if included in this M&O contract, entered into between the Contractor as operator of the Laboratory and a non-Federal party under which the Government,

through its laboratory, provides personnel, services, facilities, equipment, intellectual property, only when such work does not interfere with DOE-funded activities conducted as authorized by other parts of this M&O contract and on a fully reimbursable basis.

(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, widespread notice of technology transfer opportunities, and early stage and precommercial technology demonstration to remove barriers that limit private sector interest and demonstrate potential commercial applications of any research and technologies arising from Laboratory activities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this contract.

(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 Laboratory research or related technology transfer activities. Such implementing procedures shall be provided to the Contracting Officer for review and approval within sixty (60) days after execution of this contract. The Contracting Officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:

(1) Inform employees of and require conformance with standards of conduct and integrity in connection with research involving non-federal sponsors in accordance with the provisions of paragraph (n)(5) of this clause;

(2) Review and approve employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to contractor-developed intellectual property;

(3) Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE projects and programs;



(4) Conduct activities relating to commercial utilization of contractor-developed intellectual property so as to avoid interference with or adverse effects on user facility or SPP activities of the Contractor;

(5) Conduct DOE-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts of interest with non-Government funded work;

(6) Notify the Contracting Officer with respect to any new work to be performed or proposed to be performed under the contract for DOE or other Federal agencies where the new work or proposal involves intellectual property in which the Contractor has obtained or intends to request or elect title;

(7) Except as provided elsewhere in this contract, obtain the approval of the Contracting Officer for any licensing of or assignment of title to Intellectual Property rights by the Contractor to any business or corporate affiliate of the Contractor;

(8) Obtain the approval of the Contracting Officer prior to any assignment, exclusive licensing, or option for exclusive licensing, of intellectual property to any individual who is a current or has been a Laboratory employee within the previous two years or to the company in which the individual is a principal and the Contractor's request should include notice of any technology transfer agreements (e.g., SPP and CRADA) associated with the intellectual property;

(9) Notify non-Federal sponsors of SPP activities, or non-Federal users of user facilities, of any relevant intellectual property interest of the Contractor prior to execution of SPP or user agreements; and

(10) Notify the Contracting Officer and DOE funding program prior to evaluating a proposal by a third party for DOE, when (a) the evaluator is an inventor of a Contractor invention that is the subject matter of the proposal or (b) the evaluator is a principal or has financial interest in the third party or (c) the third party is a licensee of the Contractor.

(e) *Fairness of opportunity.* In conducting its technology transfer activities, the Contractor shall prepare procedures and take all reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the Laboratory and by entities other than the Contractor.

(f) *U.S. industrial competitiveness for licensing and assignments of intellectual property.* (1) In the interest of enhancing U.S. Industrial Competitiveness, the Contractor shall, in its licensing and assignments of intellectual property, give preference in such a manner as to enhance the accrual of economic and technological benefits to the U.S.

domestic economy. The Contractor shall consider the following factors in all of its licensing and assignment decisions involving Laboratory intellectual property where the Laboratory obtains rights during the course of the Contractor's operation of the Laboratory under this contract--

(i) Whether any resulting design and development will be performed in the United States and whether resulting products, embodying parts, including components thereof, will be substantially manufactured in the United States; and

(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;

(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;

(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) of this clause, 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; and

(D) 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).

(4) The Contractor agrees to be bound by paragraph (t) U.S. Competitiveness in its Patent Rights provision (e.g. 48 CFR 970.5227-10 or 48 CFR 970.5227-12 as may be modified) as applicable.

(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. Except for CRADA and SPP where the guidance is already provided elsewhere, the Contractor shall identify and obtain the approval of the Contracting Officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.

(h) *Disposition of income.* (1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the Laboratory, consistent with the research and development mission and objectives of the Laboratory and subject to Section 12(b)(5) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(b)(5)) and Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.) as amended through the effective date of this contract award or modification. If the net amounts of such royalties and income received from patent licensing after payment of patenting costs, licensing costs, payments to inventors and other expenses incidental to the administration of Subject Inventions during any fiscal year exceed 5 percent of the Laboratory's budget for that fiscal year, 15 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be Subject Inventions under the contract.

(2) The Contractor shall include as a part of its annual Laboratory Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the Laboratory, and at the end of the year, provide a separate accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for any purpose inconsistent with DOE mission direction.

(3) The Contractor shall establish subject to the approval of the Contracting Officer a policy for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the Contracting Officer. The Contractor shall notify the

Contracting Officer of any changes to that policy, and 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 Laboratory shall be transferred, at the Contracting Officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the Contracting Officer. The Contractor shall transfer title, as one or several packages if necessary, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other intellectual property rights which arose at the Laboratory, to the successor contractor 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), as amended. Such notification shall include sufficient information to enable DOE to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE's nuclear weapon production complex. DOE shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and DOE shall promptly notify the Contractor as to whether the technology is transferable.

(2) The Contractor shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADAs, licensing agreements and assignments, notice to such third parties that the export of goods and/or technical data from the United States may require some form of export control license or other authority from the U.S. Government and that failure to obtain such export control license may result in criminal liability under U.S. laws.

(3) For other than fundamental research as defined in National Security Decision Directive 189, the Contractor is responsible to conduct internal export control reviews and assure that technology is transferred in accordance with applicable law.

(k) *Records.* The Contractor shall maintain records of its technology transfer activities in a manner and to the extent satisfactory to the DOE and specifically including, but not limited to, the licensing agreements, assignments and the records required to implement the requirements of paragraphs (e), (f), and (h) of this clause and shall provide reports to the Contracting Officer to enable DOE to maintain the reporting requirements of Section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(6)). Such reports shall be made annually in a format to be agreed upon between the Contractor and DOE and in such a format which will serve to adequately inform DOE of the Contractor's technology transfer activities while protecting any data not subject to disclosure under the Rights in Technical Data clause and paragraph (n) of this clause. Such records shall be made available in

accordance with the clauses of this contract pertaining to inspection, audit and examination of records.

(l) *Reports to Congress.* To facilitate DOE's reporting to Congress, the Contractor is required to submit annually to DOE a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing intellectual property rights in Laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan, which may be included in the Annual Laboratory Plan, shall be provided to the Contracting Officer on or before October 1st of each year.

(m) *Oversight and appraisal.* The Contractor is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this contract. Laboratory Contractor performance in implementing the technology transfer mission and the effectiveness of the Contractor's procedures will be evaluated by the Contracting Officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.

(n) *Technology transfer through technology transfer Agreements.* Upon approval of the Contracting Officer and as provided in DOE approved guidance, the Laboratory Director, or designee, may enter into technology transfer agreements on behalf of the DOE subject to the requirements set forth in this paragraph.

(1) *Review and approval of CRADAs.* (i) Except as otherwise directed in writing by the Contracting Officer, each JWS or MSW shall be submitted to the Contracting Officer for approval. The Contractor's Laboratory Director or designee shall provide a program mission impact statement and shall include an impact statement regarding related intellectual property rights known by the Contractor to be owned by the Government to assist the Contracting Officer in the approval determination.

(ii) The Contractor shall also include (specific to the proposed CRADA), a statement of compliance with the fairness of opportunity requirements of paragraph (e) of this clause.

(iii) Within thirty (30) days after submission of a JWS, MSW or proposed CRADA, the Contracting Officer shall approve, disapprove or request modification to the JWS, MSW or CRADA. The Contracting Officer shall provide a written explanation to the Contractor's Laboratory Director or designee of any disapproval or requirement for modification of a JWS or proposed CRADA.

(iv) Except as otherwise directed in writing by the Contracting Officer, the Contractor shall not enter into, or begin work under, a CRADA until approval of the CRADA or relevant MSW 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, relevant MSW or any time thereafter.

(2) *Selection of participants.* The Contractor's Laboratory Director or designee in deciding what CRADA to enter into shall:

(i) Give special consideration to small business firms, and consortia involving small business firms;

(ii) Give preference to business units located in the United States which agree that products or processes embodying intellectual property will be substantially manufactured or practiced in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements. The Contractor, in considering these factors, may rely upon the following information:

(A) U.S. Trade Representative Inventory of Foreign Trade Barriers,

(B) U.S. Trade Representative Special 301 Report, and

(C) 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;

(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 or otherwise as delineated in Stevenson-Wydler, as amended. The DOE shall cooperate with the Contractor in protecting such data.

(ii) Unless otherwise expressly approved by the Contracting Officer in advance for a specific CRADA, the Contractor agrees, at the request of the Contracting Officer, to transmit such data to other DOE facilities for use by DOE or its Contractors by or on behalf of the Government. When data protected pursuant to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.

(iii) A final technical report, upon completion of a CRADA, shall be provided to DOE's Office of Scientific and Technical Information; reports marked as Protected CRADA Information will not be released to the public for a period in accordance with the terms of the CRADA.

(iv) 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) *SPP and user facility programs.* (i) SPP and User Facility Agreements (UFAs) may be available for use by the Contractor in addition to CRADAs. 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., SPP and UFA, and of the Class Patent Waiver provisions associated therewith.

(ii) Where the Contractor believes that the transfer of technology to the U.S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in SPP and UFAs, a request may be made to the Contracting Officer for an exception to the Class Waivers.

(iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE approval, in such agreements, and the provisions in such agreements take precedence over any disposition of rights contained in this contract. Disposition of rights under any such agreement shall be in accordance with any DOE class waiver (including SPP 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 negotiation, approval or performance of a technology transfer agreement, 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 entity of the technology transfer agreement; or

(2) Receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the entity of the technology transfer agreement; or

(B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the entity of the technology transfer agreement, 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 negotiation, approval or performance of the technology transfer agreement 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 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 negotiation, approval or performance of the technology transfer agreement.

(o) *Technology transfer in other cost-sharing agreements.* In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the Contracting Officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.

(p) *Technology partnership ombudsman.* (1) The Contractor agrees to establish a position to be known as "Technology Partnership Ombudsman," to help resolve complaints from outside organizations regarding the policies and actions of the Contractor with respect to technology partnerships (including CRADAs), patents owned by the Contractor for inventions made at the laboratory, and technology licensing.

(2) The Ombudsman shall be a senior official of the Contractor's laboratory staff, who is not involved in day-to-day technology partnerships, patents or technology



licensing, or, if appointed from outside the laboratory or facility, shall function as such senior official.

(3) The duties of the Technology Partnership Ombudsman shall include--

(i) Serving as the focal point for assisting the public and industry in resolving complaints and disputes with the laboratory or facility regarding technology partnerships, patents, and technology licensing;

(ii) Promoting the use of collaborative alternative dispute resolution techniques such as mediation to facilitate the speedy and low cost resolution of complaints and disputes, when appropriate; and

(iii) Submitting a quarterly report, in a format provided by DOE, to 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.

**CLAUSE I.144 - DEAR 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002) (DEVIATION) (AL 2021-04)**

(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 48 CFR 52.227-1, without Alternate I, but suitably modified to identify the parties, in all subcontracts expected to exceed the simplified acquisition threshold 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 the simplified acquisition threshold.

(3) Omission of an authorization and consent clause from any subcontract, including those valued less than the simplified acquisition threshold does not affect this authorization and consent.

**CLAUSE I.145 - DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2000) (DEVIATION) (AL 2021-04)**

(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 the simplified acquisition threshold.

**CLAUSE I.146 - 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.

**CLAUSE I.147 - 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 Contractor makes a royalty or other payment.

(g) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of any royalties to which this clause applies, the Contractor shall promptly notify the Contracting Officer of that fact and shall promptly reimburse the Government for any refunds received or royalties paid after having received notice of such relief.

(h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

**CLAUSE I.148A - DEAR 970.5227-10 PATENT RIGHTS-MANAGEMENT AND OPERATING CONTRACTS, NONPROFIT ORGANIZATION OR SMALL BUSINESS FIRM CONTRACTOR (DEC 2000) (DEVIATION) (AL 2022-01)**

(a) *Definitions.* *DOE licensing regulations* means the Department of Energy patent licensing regulations at 10 CFR part 781.

*Exceptional circumstance subject invention* means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii) and in accordance with 37 CFR 401.3(e).

*Initial Patent Application* means, as to a given Subject Invention, the first provisional or non- provisional U.S. national application for patent as defined in 37 CFR 1.9(a)(2) and (3), respectively, the first international application filed under the Patent Cooperation Treaty as defined in 37 CFR 1.9(b) which designates the United States, or the first application for a Plant Variety Protection certificate, as applicable.

*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.).

*Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

*Nonprofit organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

*Patent Counsel* means the Department of Energy (DOE) Patent Counsel assisting the DOE contracting activity. The Patent Counsel is the first and primary point of contact for activities described in this clause.

*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.

*Small business firm* means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the

Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3–8 and 13 CFR 121.3– 12, respectively, are used.

*Statutory Period* means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112-29.

*Subject Invention* means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

*(b) Allocation of Principal Rights.*

(1) *Retention of title by the Contractor.* Except for exceptional circumstance subject inventions, the contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) *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 DOE's Office of International Affairs (International Commitments—IEC) (<http://energy.gov/ia/iec-documents>), 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.

(3) *Exceptional circumstance subject inventions.* Except to the extent that rights are retained by the Contractor in a determination of exceptional circumstances or granted to a contractor through a determination of greater rights in accordance with subparagraph (b)(4) of this clause, the Contractor does not have a right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions. (i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions--

(A) Uranium enrichment technology;

(B) Storage and disposal of civilian high-level nuclear waste and spent fuel technology; and

(C) National security technologies classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168).

(ii) As determined by the DOE, inventions made under any agreement, contract or subcontract, related to the exceptional circumstance subject inventions under U.S.C. § 202, maintained by the Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, include but is not limited to the following—

(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) Any funding agreement related to Energy Efficiency, Storage, Integration and Related Technologies, Renewable Energy, and Advanced Energy Technologies which is funded by the Office of Energy Efficiency and Renewable Energy (EERE) or the Advanced Research Projects Agency – Energy (ARPA-E);

(E) Solid State Energy Conversion Alliance (SECA), if the Contractor is a participant in the “Core Technology Program”;

(F) Solid State Lighting (SSL) Program, if the Contractor is a participant in the “Core Technology Program.”

(G) Cybersecurity, Energy Security, and Emergency Response;

(H) Quantum Information Science Technologies; and

(I) Domestic Manufacture of DOE Science and Energy Technologies (S&E DEC).

(iii) Inventions subject to “Department of Energy Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies” (S&E DEC) issued June 7, 2021, must comply with paragraph (t) U.S. Competitiveness requirements to the maximum extent authorized by the S&E DEC unless otherwise directed by DOE Patent Counsel in writing.

(iv) DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, tasks, or other classifications for the purpose of determining DOE exceptional circumstance subject inventions.

(4) *Contractor request for greater rights in exceptional circumstance subject inventions.* The Contractor may request rights greater than allowed by the exceptional circumstance determination in an exceptional circumstance subject invention by submitting such a request in writing to Patent Counsel at the time the exceptional circumstance subject invention is disclosed to DOE or within eight (8) months after conception or first actual reduction to practice of the exceptional circumstance subject invention, whichever occurs first, unless a longer period is authorized in writing by the Patent Counsel for good cause shown in writing by the Contractor. DOE may, in its discretion, grant or refuse to grant such a request by the Contractor.

(5) *Contractor employee-inventor rights.* If the Contractor does not elect to retain title to a subject invention or does not request greater rights in an exceptional circumstance subject invention, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE, and DOE may, in its discretion, grant or refuse to grant such a request by the Contractor employee-inventor.

(6) *Government assignment of rights in Government employees' subject inventions.* If a Government employee is a joint inventor of a subject invention or of an exceptional circumstance subject invention to which the Contractor has rights, the Government may assign or refuse to assign to the Contractor any rights in the subject invention or exceptional circumstance subject invention acquired by the Government from the Government employee, in accordance with 48 CFR 27.304–1(d). The rights assigned to the Contractor are subject to any provision of this clause that is applicable to subject inventions in which the Contractor retains title, including reservation by the Government of a nonexclusive, nontransferable, irrevocable, paid-up license, except that the Contractor shall file its Initial Patent Application claiming the subject invention or exceptional circumstance invention within one (1) year after the assignment of such rights. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the Government employee.

(c) *Subject invention disclosure, election of title and filing of patent application by contractor.*

(1) *Subject invention disclosure.* The contractor will disclose each subject

invention to the Patent Counsel within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written or electronic report and shall identify the contract under which the invention was made and the inventor(s) and all sources of funding by Budget and Resources (B&R) code and, if applicable, the technology transfer agreement number for the invention. It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted or made available for publication at the time of disclosure. The disclosure shall identify if the invention falls within an exceptional circumstance field. DOE will make a determination and advise the Contractor within 30 days of receipt of an invention disclosure as to whether the invention is an exceptional circumstance subject invention. In addition, after disclosure to the Patent Counsel, the Contractor will notify the agency of any accepted manuscript describing the invention for publication or any on sale or public use planned by the contractor that is 60 days prior to the end of the Statutory Period. The Contractor shall notify Patent Counsel prior to any release or publication of information concerning any nonelectable subject invention such as an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.

(2) *Election by the Contractor.* Except as provided in paragraph (b)(2) of this clause, the Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the Statutory Period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the Statutory Period.

(3) *Filing of patent applications by the Contractor.* The Contractor will file its Initial Patent Application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, or prior to the end of any Statutory Period herein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding first filed patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) *Contractor's request for an extension of time.* Requests for an extension of



the time for disclosure, election, and filing under subparagraphs (c)(1), (2) and (3) may, at the discretion of Patent Counsel, be granted.

(5) *Publication review.* During the course of the work under this contract, the Contractor may desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. Contractor's Invention Identification Procedures under paragraph (f)(5) should address timely disclosure of inventions, consider whether review is required, and if so, facilitate such review by Contractor personnel responsible for patent matters prior to disclosure of publications in order that public disclosure of such information will not adversely affect the patent interest of DOE or the Contractor.

(6) *Reporting to DOE and Approvals.* Whenever possible in this paragraph (c), the Government electronic reporting system (e.g., iEdison or similar system) shall be used for reporting and approvals.

(d) *Conditions when the Government may obtain title.* The Contractor will convey to the DOE, upon written request, title to any subject invention—

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title.

(2) In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in subparagraph (c) above, but prior to its receipt of the written request of the DOE, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(4) If the Contractor requests that DOE acquire title or rights from the Contractor in a subject invention to which the Contractor had initially retained title or rights, or in an exceptional circumstance subject invention to which the Contractor was granted greater rights, DOE may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE's sole discretion.

(5) Upon a breach of paragraph (t) U.S. Competitiveness of this clause.

(e) *Minimum rights of the Contractor and protection of the Contractor's right to file.*

(1) *Request for a Contractor license.* The Contractor may request the right to reserve a revocable, nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. DOE may grant or refuse to grant such a request by the Contractor. When DOE approves such reservation, the Contractor's license will normally extend to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) *Revocation or modification of a Contractor license.* The Contractor's domestic license maybe revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and DOE licensing regulations at 10 CFR part 781. This license will not be revoked in the field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the subject invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application of the subject invention in that foreign country.

(3) *Notice of revocation or modification of a Contractor license.* Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations at 10 CFR part 781 concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license. (f) *Contractor action to protect the Government's interest.* (1) *Execution of delivery of title or license instruments.* The Contractor agrees to execute or to have executed, and promptly deliver to the Patent Counsel all instruments necessary to accomplish the following actions:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title; and

(ii) Convey title to DOE when requested under subparagraphs (b) or

paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) *Contractor employee agreements.* The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) *Notification of discontinuation of patent protection.* The Contractor will notify the Patent Counsel of any decision not to file a patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 60 days before the expiration of the response period required by the relevant patent office.

(4) *Notification of Government rights.* The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention."

(5) *Invention identification procedures.* The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed and shall submit a written description of such procedures to the Contracting Officer so that the Contracting Officer may evaluate and determine their effectiveness.

(6) *Patent filing documentation.* If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel, upon request, the following information and documents:

- (i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);

(ii) An executed and approved instrument fully confirmatory of all Government rights in the subject invention; and

(iii) The patent number, issue date, and a copy of any issued patent claiming the subject invention.

(7) *Duplication and disclosure of documents.* The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to the confidentiality provision at 35 U.S.C. 205 and 37 CFR part 401.

(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 37 CFR 401.14, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph (b)(2) of this clause. The subcontractor retains all rights provided for the contractor in the patent rights clause at 37 CFR 401.3(a) and 401.14. If the S&E DEC is applicable (see subparagraph (b)(6)(iii) of this clause), paragraph (t) U.S. Competitiveness must be included in the subcontractor's patent clause as paragraph (m) U.S. Competitiveness. Additionally, the following item (4) must be added to paragraph (d) of the subcontractor's patent clause "(4) Upon a breach of paragraph (m) U.S. Competitiveness of this clause."

(3) *Inclusion of patent rights clause—subcontractors other than non-profit organizations and small business firms.* Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227–13 suitably modified to identify the parties, in any contract for experimental, developmental, demonstration or research work. For subcontracts subject to exceptional circumstances, the contractor must consult with DOE patent counsel with respect to the appropriate patent clause. For subcontracts subject to exceptional circumstances, the contractor must consult with DOE patent counsel with respect to the appropriate patent clause. If the S&E DEC is applicable (see subparagraph (b)(6)(iii) of this clause), paragraph (t) U.S. Competitiveness

must be included in the subcontractor's patent clause as paragraph (n) U.S. Competitiveness. Additionally, the following must be appended to the first sentence paragraph of (d)(1) "or upon a breach of paragraph (n) U.S. Competitiveness of this clause."

(4) *DOE and subcontractor contract.* With respect to subcontracts at any tier, DOE, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(5) *Subcontractor refusal to accept terms of patent clause.* If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.

(6) *Notification of award of subcontract.* Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.

(7) *Identification of subcontractor subject inventions.* If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention.

(h) *Reporting on utilization of subject inventions.* The Contractor agrees to submit to DOE on request, periodic reports, no more frequently than annually, on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. In addition, the Contractor shall provide data to DOE for the annual data call for the Department of Commerce report that includes the number of patent applications filed, the number of patents issued, licensing activity, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the

Government without permission of the Contractor.

(i) *Preference for United States Industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in Rights.* The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right under 35 U.S.C. 203 and in accordance with the procedures in 37 CFR 401.6 and any DOE supplemental regulations to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee or exclusive licensee refuses such a request, DOE has the right to grant such a license itself

(k) *Special provisions for contracts with nonprofit organizations.* If the Contractor is a nonprofit organization, it agrees that:

(1) *DOE approval of assignment of rights.* Rights to a subject invention in the United States may not be assigned by the Contractor without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions of this clause as the Contractor.

(2) *Small business firm licensees.* It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding

small business firm applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(2).

(3) *Contractor licensing of subject inventions.* To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.

(l) *Communications.* The Contractor shall direct any notification, disclosure or request provided for in this clause to the Patent Counsel assisting the DOE contracting activity.

(m) *Reports.*

(1) *Interim reports.* Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period.

(2) *Final reports.* Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period under which a subject invention was reported, or a statement that no such subject inventions under subcontracts were reported during the contract performance period.

(n) *Records relating to subject inventions—*

(1) *Contractor compliance.* Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor compliance with any requirement of this clause.

(2) *Unreported inventions.* If the Contracting Officer is aware of an invention that

is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, including exceptional circumstance subject inventions, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

(3) *Confidentiality.* Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(4) *Power of inspection.* With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(o) *Facilities license.* In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or product manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(p) *Atomic Energy.*

(1) *Pecuniary awards.* No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) *Patent agreements.* Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (p)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(q) *Classified inventions.*

(1) *Approval for filing a foreign patent application.* The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject



invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.

(2) *Transmission of classified subject matter.* If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

(3) *Inclusion of clause in subcontracts.* The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(r) *Patent functions.* Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(s) *Educational awards subject to 35 U.S.C. 212.* The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) which is subject to treaties or international agreements as set forth in paragraph (b)(3) of this clause or agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

(t) *U. S. Competitiveness. Notwithstanding 48 CFR 970.5227-3(f) U.S. Industrial Competitiveness, for all work subject to the S&E DEC, the Contractor agrees that any products embodying any subject invention or produced through the use of any subject invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of DOE that it is not commercially feasible. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., alternative binding commitments to provide an overall net benefit to the U.S. economy. The Contractor agrees that it will not license, assign, or otherwise transfer any subject invention to any entity, at any tier, unless that entity agrees to these same requirements. Should the Contractor or other such entity receiving rights in the invention(s): (1) undergo a change in ownership amounting to a controlling interest, or (2) sell, assign, or*

*otherwise transfer title or exclusive rights in the invention(s), then the assignment, license, or other transfer of rights in the subject invention(s) is/are suspended until approved in writing by DOE. The Contractor and any successor assignee will convey to DOE, upon written request from DOE, title to any subject invention, upon a breach of this paragraph. The Contractor will include this paragraph in all subawards/contracts, regardless of tier, for experimental, developmental or research work.*

*(u) Annual appraisal by Patent Counsel.* Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

*(v) Unauthorized Access.* The contractor will protect all invention reports, unpublished patent applications and other invention related information from unauthorized access and disclosure using at least commonly available techniques and practices. In the event that the Contractor becomes aware of unauthorized access to invention reports, unpublished patent applications and other invention related information, the Contractor shall notify Patent Counsel within 7 days.

**CLAUSE I.148B - DEAR 970.5227-12 PATENT RIGHTS – MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, PATENT WAIVER (DEC 2000) (DEVIATION) (AL 2022-01)**

*(a) Definitions.*

*Department of Energy (DOE)*, as used in this clause, includes the National Nuclear Security Administration (NNSA), and unless otherwise identified or indicated, includes the coordinated efforts of the DOE and NNSA.

*DOE licensing regulations* means the Department of Energy patent licensing regulations at 10 CFR part 781.

*DOE patent waiver regulations* means the Department of Energy patent waiver regulations at 10 CFR part 784.

*Exceptional Circumstance Subject Invention* means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii), and in accordance with 37 CFR 401.3(e).

*Initial Patent Application* means, as to a given Subject Invention, the first provisional or non-provisional U.S. national application for patent as defined in 37 CFR 1.9(a)(2) and (3), respectively, the first international application filed under the Patent Cooperation Treaty as defined in 37 CFR 1.9(b) which designates the United States, or

the first application for a Plant Variety Protection certificate, as applicable.

*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.).

*Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

*Patent Counsel* means DOE Patent Counsel assisting the DOE contracting activity. The Patent Counsel is the first and primary point of contact for activities described in this clause.

*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.

*Statutory period* means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112-29.

*Subject Invention* means any invention of the Contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance. (b) *Allocation of Principal Rights.*

(1) *Assignment to the Government.* Except to the extent that rights are retained by the Contractor by 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 may grant to the Contractor an advance class waiver of Government rights in any or all 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. 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, (t) U.S.

Competitiveness 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, and DOE 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) *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 DOE's Office of International Affairs (international Commitments—IEC) (<http://energy.gov/ia/iec-documents>), 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.

(6) *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) As determined by the DOE, inventions made under any agreement, contract or subcontract, related to the exceptional circumstance subject inventions under U.S.C. § 202, maintained by the Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, include but is not limited to the following—

(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) Any funding agreement related to Energy Efficiency, Storage, Integration and Related Technologies, Renewable Energy, and Advanced Energy Technologies which is funded by the Office of Energy Efficiency and Renewable Energy (EERE) or the Advanced Research Projects Agency – Energy (ARPA-E);

(E) Solid State Energy Conversion Alliance (SECA), if the Contractor is a participant in the “Core Technology Program”;

(F) Solid State Lighting (SSL) Program, if the Contractor is a participant in the “Core Technology Program.” ;

(G) Cybersecurity, Energy Security, and Emergency Response;

(H) Quantum Information Science Technologies; and

(I) Domestic Manufacture of DOE Science and Energy Technologies (S&E DEC).

(iii) Inventions subject to "Department of Energy Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies" (S&E DEC) issued 6/7/2021 must comply with paragraph (t) U.S. Competitiveness requirements to the maximum extent authorized by the S&E DEC unless otherwise directed by DOE Patent Counsel in writing.

(iv) Exceptional circumstances subject inventions are as set forth in the applicable patent waiver. In addition, DOE 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 exceptional circumstance subject inventions.

(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 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 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, and DOE 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 employee is a joint inventor of a subject invention to which the Contractor has rights, DOE may assign or refuse to assign any rights in the subject invention acquired by the Government from the DOE 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 employee.

*(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 no less than 60 days before any on sale, public use, or publication of the subject invention. The disclosure to DOE

shall be in the form of a written or electronic 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, if applicable, the technology transfer agreement numbers; and
- (viii) The identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Strategic Partnership Projects agreements.

Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE under this paragraph are deemed made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908.

(2) *Publication after disclosure.* After disclosure of the subject invention to the DOE, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor. 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 within two (2) years of the date of the disclosure of the subject invention to DOE, 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 Statutory Period under 35 U.S.C. 102(b), the period for election may be shortened by DOE to a date that is no more than sixty (60) days prior to the end of the 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 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 Statutory Period 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 first filed 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, upon request, the following information and documents:

- (i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);
- (ii) An executed and approved instrument fully confirmatory of all Government rights in the subject invention; and
- (iii) The patent number, issue date, and a copy of any issued patent claiming the subject invention.

*(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.



(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.

(8) *Reporting to DOE and Approvals.* Whenever possible in this paragraph (c), the Government electronic reporting system (e.g., iEdison or similar system) may be used for reporting and approvals.

(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 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 may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE's sole discretion.

(2) *Failure to disclose or elect to retain title.* Title vests in DOE and DOE 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, 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 may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE; 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'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 not file a non-provisional application, or 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 may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE.

(5) *Termination of advance class waiver.* DOE may request, in writing, title to any

subject inventions from the Contractor, and the Contractor shall convey title to the subject inventions to DOE, if the advance class waiver granted under subparagraph (b)(2) of this clause is terminated under paragraph (v) of this clause.

(6) Upon a breach of paragraph (t) U.S. Competitiveness 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 may grant or refuse to grant such a request by the Contractor. If DOE grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.

(2) *Transfer of a contractor license.* Contractor must obtain DOE approval of any transfer of the Contractor's license in a subject invention, and DOE 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 may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR part 404 and DOE licensing regulations. DOE may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its 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 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 have 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 shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations.

(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 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 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 non-technical 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.* The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation 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 60 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. 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 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.

(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 37 CFR 401.14, 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. If the S&E DEC is applicable (see subparagraph (b)(3)(iii) of this clause), paragraph (t) U.S. Competitiveness must be included in the subcontractor's patent clause as paragraph (m) U.S. Competitiveness. Additionally, the following item (4) must be added to paragraph (d) of the subcontractor's patent clause “(4) Upon a breach of paragraph (m) U.S. Competitiveness 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. If the S&E DEC is applicable (see subparagraph (b)(3)(iii) of this clause), paragraph (t) U.S. Competitiveness must be included in the subcontractor's patent clause as paragraph (n) U.S. Competitiveness. Additionally, the following must be appended to the first sentence paragraph of (d)(1) " or upon a breach of paragraph (n) U.S. Competitiveness of this clause."

(4) *DOE and subcontractor contract.* With respect to subcontracts at any tier, DOE, the subcontractor and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause; 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, 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. In addition, the Contractor shall provide data to DOE for the annual data call for the Department of Commerce report that included the number of patent applications filed, the number of

patent issued, licensing activity, gross royalties received by the Contractor, and other data and information reasonably specified by DOE. Upon request by DOE, the Contractor also agrees to provide reports in connection with any march-in proceedings undertaken by DOE, 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 agrees 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 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 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 has the right to grant such a license itself under the patent waiver.

(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's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE in accordance with the requirements of subparagraphs (f)(3) and (f)(4) of this clause.

(2) *Final reports.* Upon DOE's request, the Contractor shall submit to DOE, 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) *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, and the Contracting Officer believes the unreported invention may be a subject invention, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

(3) *Confidentiality.* Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(4) *Power of inspection.* With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(q) *Patent functions.* Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(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 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 Patent Counsel.* Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

*(t) U. S. Competitiveness. Notwithstanding 48 CFR 970.5227-3(f) U.S. Industrial Competitiveness, for all work subject to the S&E DEC, the Contractor agrees that any products embodying any subject invention or produced through the use of any subject invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of DOE that it is not commercially feasible. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., alternative binding commitments to provide an overall net benefit to the U.S. economy. The Contractor agrees that it will not license, assign or otherwise transfer any subject invention to any entity, at any tier, unless that entity agrees to these same requirements. Should the Contractor or other such entity receiving rights in the invention(s): (1) undergo a change in ownership amounting to a controlling interest, or (2) sell, assign, or otherwise transfer title or exclusive rights in the invention(s), then the assignment, license, or other transfer of rights in the subject invention(s) is/are suspended until approved in writing by DOE. The Contractor and any successor assignee will convey to DOE, upon written request from DOE, title to any subject invention, upon a breach of this paragraph. The Contractor will include this paragraph in all subawards/contracts, regardless of tier, for experimental, developmental or research work.*

(u) *Publication.* The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract, to ensure such release or publication does not adversely affect the patent rights of DOE or the Contractor. At the discretion of the Patent Counsel, authority to review publications prior to release may be delegated to the Contractor.

(v) *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 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 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.

(w) *Unauthorized Access*. The contractor will protect all invention reports, unpublished patent applications and other invention related information from unauthorized access and disclosure using at least commonly available techniques and practices. In the event that the Contractor becomes aware of unauthorized access to invention reports, unpublished patent applications and other invention related information, the Contractor shall notify Patent Counsel within 7 days.

**CLAUSE I.149 - 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.

**CLAUSE I.150 - 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.

**CLAUSE I.151 - DEAR 970.5231-4 PREEXISTING CONDITIONS (DEC 2000)**  
**(ALTERNATE II) (DEC 2000)**

(a) The Department of Energy agrees to reimburse the Contractor, and the contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the contractor arising out of any condition, act, or failure to act which occurred before the Contractor assumed responsibility on [insert date contract began]. To the

extent the acts or omissions of the contractor cause or add to any liability, expense or remediation cost resulting from conditions in existence prior to [insert date contract began], the Contractor shall be responsible in accordance with the terms and conditions of this contract.

(b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.

(c) The Contractor has the duty to inspect the facilities and sites and timely identify to the Contracting Officer those conditions which it believes could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suit, cost, expense, or disbursement or areas of actual or potential noncompliance with the terms and conditions of this contract or applicable law or regulation. The Contractor has the responsibility to take corrective action, as directed by the Contracting Officer and as required elsewhere in this contract.

**CLAUSE I.152 - 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.

**CLAUSE I.153 - DEAR 970.5232-2 PAYMENTS AND ADVANCES (DEC 2000) (ALTERNATE II) (DEC 2000) (PF 2022-23 DEVIATION) (OCT 2021)**

(a) *Payment of Total available fee: Base Fee and Incentive Fee.*

(1) The base fee amount, if any, is payable in equal monthly installments. Total available fee amount earned is payable following the Government's Determination of Total Available Fee Amount Earned in accordance with the clause of this contract entitled "Total Available Fee: Base Fee Amount and Incentive Fee Amount." Base fee amount and total available fee amount earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the Contractor, including any amounts owed for disallowed costs under this contract. No base fee amount or total available fee amount earned payment may be withdrawn against the payments cleared financing arrangement without the prior written approval of the Contracting Officer.

(2) *Provisional fee.* Additionally, if the Contracting Officer authorizes provisional payment of fee and for only as long as the Contracting Officer authorizes it, the

Contractor may withdraw from funds advanced on the last working day of each month a provisional fee equal to 6 percent of the annual total available fee amount. The Contracting Officer may for any reason withdraw his/her authorization allowing the Contractor's withdrawal of provisional fee if at any time in his/her judgement the Contractor will not earn the provisional fee. The Contracting Officer's decision to authorize the Contractor's withdrawal of provisional fee or to withdraw such authorization is solely within the Contracting Officer's discretion. Following the Government's determination of total available fee amount earned, the Contractor may withdraw from funds advanced the amount by which earned fee exceeds provisional fee; and must immediately return to funds advanced the amount by which provisional fee exceeds earned fee.

(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.

(c) *Timing of payments.* Funds for payments of allowable costs, including payments for pension plan contributions, shall be drawn from the special financial institution account when those payments are made, not when the costs are accrued.

(d) *Special financial institution account-use.* All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the Contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix C. The contractor will follow current procedures and requirements for establishing and managing the special financial institution account that are stated in the Department's Financial Management Handbook and relevant Department of Treasury rules.

(e) *Use of the special financial institution account for unallowable costs.* Government funds in the special financial institution account shall be used only 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.

(f) *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.

(g) *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.

(h) *Claims.* Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.

(i) *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.

(j) *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.

(k) *Direct payment of charges.* The Government reserves the right, upon 10 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.

(l) *Determining allowable costs.* Regardless of contractor type, the Contracting Officer shall determine allowable costs in accordance with 48 CFR 31.2 and 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.

**CLAUSE I.154 - DEAR 970.5232-3 ACCOUNTS, RECORDS AND INSPECTION (DEC 2010) (DEVIATION) (PF 2022-23) (OCT 2021)**

(a) *Accounts.* The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs; 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 the 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' incurred costs.* If the subcontractor's incurred costs are a factor in determining the amount the Contractor pays the subcontractor and submits to the Government for reimbursement, the Contractor shall: perform a sufficient amount of audit work of its subcontractor's incurred costs to provide reasonable assurance the costs are allowable; or arrange for an audit by the cognizant government audit agency through the Contracting Officer of its subcontractor's incurred costs.

(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 the clause 970.5204-3, Access to and Ownership of Records, all other records in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.

(e) *Reports.* The Contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.

(f) *Inspections.* The DOE shall have the right to inspect the work and activities of the Contractor under this contract at such time and in such manner as it shall deem appropriate.

(g) *Subcontracts.* The Contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

(h) *Comptroller General.* (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's or subcontractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any employee regarding such transactions.

(1) 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.

(2) 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 to the Contracting Officer, 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 52.242-3, Penalties for Unallowable Costs; require a refund; reduce the contractor's otherwise earned fee; and take such other action as authorized in law, regulation, or this contract.

**CLAUSE I.155 - 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 45 day period hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only 45 days and to cover the contractor's unpaid fee and any negotiated fixed amounts, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), less the amount of the contractor's fee then earned but not paid and any negotiated fixed amounts, is in the contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the Termination clause of this contract.

(d) Financial plans; cost and encumbrance limitations. In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The contractor agrees

(1) to comply with the specific limitations (ceilings) on costs and encumbrances

set forth in such plans and directives,

(2) to comply with other requirements of such plans and directives, and

(3) to notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.

(e) Government's right to terminate not affected. The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the Termination clause of this contract.

**CLAUSE I.156 - 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 Procurement Executive.

(b) The contractor is not liable to the Government for increased costs or interest resulting from its subcontractors' failure to comply with the clauses at FAR 52.230-2, "Cost Accounting Standards," and FAR 52.230-6, "Administration of Cost Accounting Standards," if the contractor includes in each covered subcontract a clause making the subcontractor liable to the Government for increased costs or interest resulting from the subcontractor's failure to comply with the clauses; and the contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the subcontractor.

**CLAUSE I.157 - DEAR 970.5232-6 STRATEGIC PARTNERSHIP PROJECT FUNDING AUTHORIZATION (April 23, 2015)**

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

requirements for Strategic Partnership Projects applicable to this contract.

**CLAUSE I.158 - DEAR 970.5232-7 FINANCIAL MANAGEMENT SYSTEM (DEC 2000) (DEVIATION) (PF 2022-23) (OCT 2021)**

(a) The Contractor shall maintain and administer a financial management system that is suitable to provide proper accounting in accordance with DOE requirements. In addition, the Contractor shall maintain and administer a financial management system that is in accordance with Generally Accepted Accounting Principles (GAAP) for Federal entities, as defined by the Federal Accounting Standards Advisory Board and implemented by the DOE Financial Management Handbook and other implementing policies. The financial system will also permit the proper allocation of costs to separately funded activities consistent with Cost Accounting Standards (CAS), as defined by 48 CFR 9900 and any implementing DOE policies, and ensures that accountability for the assets can be maintained.

(b) The Contractor shall submit to the Contracting Officer 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 30 days in advance of any planned implementation of any substantial changes to the plan and, as requested by the Contracting Officer, shall submit any such changes to the Contracting Officer for written approval before implementation.

**CLAUSE I.159 - DEAR 970.5232-8 INTEGRATED ACCOUNTING (DEC 2000) (DEVIATION) (PF 2022-23) (OCT 2021)**

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 corresponding accounts and that has electronic capability to transmit monthly and year-end self-balancing trial balances to the Department's primary accounting system for reporting financial activity under this contract in accordance with requirements imposed by the Contracting Officer pursuant to the Laws, Regulations, and DOE Directives clause of this contract.

**CLAUSE I.160 - DEAR 970.5235-1 FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER SPONSORING AGREEMENT (DEC 2010)**

(a) Pursuant to 48 CFR 35.017-1, this contract constitutes the sponsoring agreement between the Department of Energy and the contractor, which establishes the relationship for the operation of a Department of Energy sponsored Federally Funded Research and Development Center (FFRDC).

(b) In the operation of this FFRDC, the contractor may be provided access beyond that which is common to the normal contractual relationship, to Government and supplier data, including sensitive and proprietary data, and to Government employees and facilities

needed to discharge its responsibilities efficiently and effectively. Because of this special relationship, it is essential that the FFRDC be operated in the public interest with objectivity and independence, be free from organizational conflicts of interest, and have full disclosure of its affairs to the Department of Energy.

(c) Unless otherwise provided by the contract, the contractor may accept work from a nonsponsor (as defined in 48 CFR 35.017) in accordance with the requirements and limitations of clause 48 CFR 970.5217-1, Strategic Partnership Projects Program.

(d) As an FFRDC, the contractor shall not use its privileged information or access to government facilities to compete with the private sector. Specific guidance on restricted activities is contained in DOE Order 481.1C, Strategic Partnership Projects (Formerly Known as Work for Others (Non-Department of Energy Funded Work)) or successor version.

**CLAUSE I.161 - DEAR 970.5236-1 GOVERNMENT FACILITY SUBCONTRACT APPROVAL (DEC 2000) (SC ALTERNATE) (APR 2018)**

The Contractor shall procure, by subcontract, the construction of new facilities or the alteration or repair of Government-owned facilities at the site. All such subcontracts which meet the review thresholds established in *Appendix G*, shall be subject to the written approval of the Contracting Officer.

**CLAUSE I.162 - 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.

**CLAUSE I.163 - DEAR 970.5244-1 CONTRACTOR PURCHASING SYSTEM (AUG 2016) (DEVIATION) (PF 2015-17) (MAR 2015) (DEVIATION) (PF 2022-23) (OCT 2021)**

(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. 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 appropriate to the value of the purchase and adequate to establish the propriety of the transaction and the price paid. The Contractor's obligations include, among other things, retaining documentation to justify the cost on any flexibly priced subcontract or any subcontract with a flexibly priced element. DOE reserves the right at any time to require that the Contractor submit for approval any or all subcontracts or purchases under this contract. The Contractor shall not purchase any item or service expressly prohibited by the written direction of DOE, and shall use any special and directed sources expressly required by the DOE Contracting Officer. DOE will conduct periodic appraisals of the Contractor's management of all facets of the Contractor's purchasing function, including the Contractor's compliance with its approved system and methods and the Contractor's management of the function. Such appraisals shall be performed against the criteria and measures set forth in 48 CFR subpart 44.3. The Contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (y) of this clause.

(b) *Acquisition of utility services.* Utility services shall be acquired in accordance with the requirements of 48 CFR subpart 970.41.

(c) *Acquisition of real property.* Real estate or real property interests 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—or a sufficient amount of audit work—to provide reasonable assurance that all claimed subcontract costs are allowable for: flexibly priced subcontracts at all tiers; and the flexibly priced elements in any subcontracts at all tiers (“flexibly priced” subcontracts and elements include Cost-Reimbursement subcontracts, Time-and-Materials subcontracts, cost-reimbursement elements in Fixed-Priced contracts, etc.); and

(ii) Audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.



(2) Responsibility for determining the allowability of costs under each cost-reimbursement subcontract remains with the Contractor or next higher-tier subcontractor. The Contractor shall provide, in appropriate cases, for the timely joint involvement of the Contractor and the DOE Contracting Officer in resolution of subcontract cost allowability. In no case, however, shall the Contractor's subcontract audit arrangements preclude the Contracting Officer's determination of the allowability or unallowability of the subcontract costs the Contractor claims for reimbursement.

(3) Where audits of subcontractors at any tier are required, the Contractor shall consult with the DOE Contracting Officer on the best approach for obtaining an audit; this may involve employing external auditors. The Contractor shall interact with the cognizant Federal agency in a manner appropriate to the magnitude and nature of the subcontracted work. In no case, however, shall subcontractor auditing arrangements preclude determination by the Contracting Officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the Contractor.

(4) Allowable costs for cost-reimbursement 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 amounts as set forth in 48 CFR 28.102-2(b) 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.

(5) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of \$150,000, a payment bond shall be obtained on Standard Form 25A modified to name the Contractor as well as the United States of America as obligees. The amounts shall be determined in accordance with 48 CFR 28.102-2(b).

(6) 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.

(7) 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 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 that is expected to exceed the simplified acquisition threshold.

(i) *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.

(j) *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.

(k) *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.

(l) *Government property*. The Contractor shall establish and maintain a property management system that complies with criteria in 48 CFR 970.5245-1, Property.

(m) *Indemnification.* Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Head of the Contracting Activity, in consultation with the local legal counsel.

(n) *Leasing of motor vehicles.* Contractors shall comply with 48 CFR subpart 8.11 and 48 CFR subpart 908.11.

(o) *Management, acquisition and use of information resources.* Requirements for information technology and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders, statutes, and regulations.

(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 chapter 102), the Federal Property Management Regulation (41 CFR chapter 101), and the following:

- (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) Reserved
- (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.* The Contractor 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.* The Contractor shall include appropriate clauses in subcontracts related to quality assurance requirements that provide no less protection for the Government, as that required of the Contractor 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 controlled 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) Wage rate requirements (construction), formerly known as 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 904.404(d)(7).

(4) Service Contract Labor Standards, formerly known as 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.

(7) Displaced Employee Hiring Preference clause prescribed in 48 CFR 926.7104.

(8) Service Contract Reporting clause prescribed in 48 CFR 4.1705.

(9) Contract Work Hours and Safety Standards – Overtime Compensation as prescribed in 48 CFR 22.305.

(10) Paid Sick leave under Executive Order 13706 as prescribed in 48 CFR 22.2110.

(11) Collective Bargaining Agreements Management and Operating Contracts as prescribed in 48 CFR 970.2201-1-3.

(12) Workplace Substance Abuse Programs at DOE Sites as prescribed in 48 CFR 970.2305-4.

(13) Minimum Wages clause prescribed in 48 CFR 22.1906.

(y) *Legal services.* Contractor purchases of litigation and other legal services are subject to the requirements in 10 CFR part 719.

**CLAUSE I.164A- DEAR 970.5245-1 PROPERTY (AUG 2016)**

(a) *Furnishing of Government property.* The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

(b) *Title to property.* Except as otherwise provided by the Contracting Officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Contracting Officer shall direct. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon

(1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the Contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(c) *Identification.* To the extent directed by the Contracting Officer, the Contractor shall identify Government property coming into the Contractor's possession or custody, by marking and segregating in such a way, satisfactory to the Contracting Officer, as shall indicate its ownership by the Government.

(d) *Disposition.* The Contractor shall make such disposition of Government property which has come into the possession or custody of the Contractor under this contract as the Contracting Officer may direct during the progress of the work or upon completion or termination of this contract. The Contractor may, upon such terms and conditions as the Contracting Officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Contracting Officer and the Contractor as the fair value thereof. The amount received by the Contractor as the result of any disposition, or the agreed fair value of any such property acquired by the Contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Government, as the Contracting Officer may direct. Upon completion of the work or the termination of this contract, the Contractor shall render an accounting, as prescribed by the Contracting Officer, of all government property which had come into the possession or custody of the Contractor under this contract.

(e) *Protection of government property - management of high-risk property and classified materials.*

(1) The Contractor shall take all reasonable precautions, and such other actions as may be directed by the Contracting Officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the Contractor's possession or custody.

(2) In addition, the Contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management Regulations (41 CFR chapter 101), the Department of Energy (DOE) Property Management Regulations (41 CFR chapter 109), and other applicable Regulations.

(3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(f) *Risk of loss of Government property.* (1)(i) The Contractor shall not be liable for

the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following -

(A) Willful misconduct or lack of good faith on the part of the Contractor's managerial personnel;

(B) Failure of the Contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer to safeguard such property under paragraph (e) of this clause; or

(C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.

(ii) If, after an initial review of the facts, the Contracting Officer informs the Contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Contractor to show that the Contractor should not be required to compensate the government for the loss, destruction, or damage.

(2) In the event that the Contractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the Contractor's compensation to the Government shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(3) The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.

(g) *Steps to be taken in event of loss.* In the event of any damage, destruction, or

loss to Government property in the possession or custody of the Contractor with a value above the threshold set out in the Contractor's approved property management system, the Contractor -

(1) Shall immediately inform the Contracting Officer of the occasion and extent thereof,

(2) Shall take all reasonable steps to protect the property remaining, and

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the Contracting Officer. The Contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(h) *Government property for Government use only.* Government property shall be used only for the performance of this contract.

(i) *Property Management - (1) Property Management System.*

(i) The Contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The Contractor's property management system shall be submitted to the Contracting Officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management Regulations and Department of Energy Property Management Regulations, and such directives or instructions which the Contracting Officer may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for -

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) [Reserved]

(C) Full integration with the Contractor's other administrative and financial systems; and

(D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.



(iii) Approval of the Contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.

(2) *Property Inventory.* (i) Unless otherwise directed by the Contracting Officer, the Contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.

(ii) If the Contractor is succeeding another contractor in the performance of this contract, the Contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The Contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.

(j) The term "contractor's managerial personnel" as used in this clause means the Contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of -

(1) All or substantially all of the Contractor's business; or

(2) All or substantially all of the Contractor's operations at any one facility or separate location to which this contract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this contract; or

(4) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or

(5) A separate and discrete major task or operation in connection with the performance of this contract.

(k) The Contractor shall include this clause in all cost reimbursable subcontracts.

**CLAUSE I.164B - DEAR 970.5245-1 PROPERTY (AUG 2016) (ALTERNATE I) (AUG 2016)**

(a) Furnishing of Government property. The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

(b) Title to property. Except as otherwise provided by the Contracting Officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the

vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Contracting Officer shall direct. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the Contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(c) Identification. To the extent directed by the Contracting Officer, the Contractor shall identify Government property coming into the Contractor's possession or custody, by marking and segregating in such a way, satisfactory to the Contracting Officer, as shall indicate its ownership by the Government.

(d) Disposition. The Contractor shall make such disposition of Government property which has come into the possession or custody of the Contractor under this contract as the Contracting Officer may direct during the progress of the work or upon completion or termination of this contract. The Contractor may, upon such terms and conditions as the Contracting Officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Contracting Officer and the Contractor as the fair value thereof. The amount received by the Contractor as the result of any disposition, or the agreed fair value of any such property acquired by the Contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Government, as the Contracting Officer may direct. Upon completion of the work or the termination of this contract, the Contractor shall render an accounting, as prescribed by the Contracting Officer, of all government property which had come into the possession or custody of the Contractor under this contract.

(e) Protection of government property—management of high-risk property and classified materials.

(1) The Contractor shall take all reasonable precautions, and such other actions as may be directed by the Contracting Officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the Contractor's possession or custody.

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

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

(3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(f) Risk of loss of Government property.

(1)(i) The Contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following—

(A) Willful misconduct or lack of good faith on the part of the Contractor's managerial personnel;

(B) Failure of the Contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer to safeguard such property under paragraph (e) of this clause; or

(C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.

(ii) If, after an initial review of the facts, the Contracting Officer informs the Contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Contractor to show that the Contractor should not be required to compensate the government for the loss, destruction, or damage.

(2) In the event that the Contractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the Contractor's compensation to the Government shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(3) The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.

(g) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the Contractor with a value above the threshold set out in the Contractor's approved property management system, the Contractor —

(1) Shall immediately inform the Contracting Officer of the occasion and extent thereof,

(2) Shall take all reasonable steps to protect the property remaining, and

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the Contracting Officer. The Contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(h) Government property for Government use only. Government property shall be used only for the performance of this contract.

(i) Property Management—(1) Property Management System.

(i) The Contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The Contractor's property management system shall be submitted to the Contracting Officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management Regulations and Department of Energy Property Management Regulations, and such directives or instructions which the Contracting Officer may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for—

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) [Reserved]

(C) Full integration with the Contractor's other administrative and financial systems; and

(D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.

(iii) Approval of the Contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.

(2) Property Inventory.

(i) Unless otherwise directed by the Contracting Officer, the Contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.

(ii) If the Contractor is succeeding another contractor in the performance of this contract, the Contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The Contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.

(j) The term "contractor's managerial personnel" as used in this clause means the Contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of—

(1) The Contractor's business; or

(2) The Contractor's operations at any one facility or separate location at which this contract is being performed; or

(3) The Contractor's Government property system and/or a Major System Project as defined in DOE Order 413.3B, or successor version (Version in effect on effective date of contract).

(k) The Contractor shall include this clause in all cost reimbursable Subcontracts.

**PART III – LIST OF DOCUMENTS, EXHIBITS, ATTACHMENTS**

## SECTION J

### LIST OF ATTACHMENTS

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## **APPENDIX A**

### **ADVANCE UNDERSTANDING ON HUMAN RESOURCES**

(This model document is provided for informational purposes only. To be completed during the transition period.)

**Applicable to the Operations of  
Fermi National Accelerator Laboratory**



**FERMI NATIONAL ACCELERATOR LABORATORY**

**ADVANCE UNDERSTANDING ON HUMAN RESOURCES**

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## SECTION I – INTRODUCTION

- (a) This Advance Understanding is intended to document the principles and measures for evaluation of the Contractor's Human Resources Management (CHRM) programs and other items of allowable personnel costs and related expenses not specifically addressed elsewhere under this contract.
- (b) The Contractor shall select, manage, and direct its workforce and apply its human resource policies in general conformity with its private operations and/or industrial practices insofar as they are consistent with this contract. Any changes to the personnel policies or practices in place as of the effective date of this contract which would increase costs, is subject to approval in advance by the Contracting Officer. Any programs or policies initiated for corporate application, permanently or for a finite period, that will impact staffing levels or compensation costs (i.e., furloughs or salary cuts) will not be applicable to Laboratory employees or employees otherwise funded through this contract, without prior approval of the Contracting Officer.
- (c) The Laboratory's programs will comply with the Federal Acquisition Regulation (FAR) cost principles and FAR contract clauses, as supplemented by the Department of Energy Acquisition Regulation (DEAR), for all Human Resources programs. The Contractor shall use effective management review procedures and internal controls to assure compliance with the FAR and DEAR as well as to ensure that the cost limitation set forth herein are not exceeded, and that areas which require prior approval of the DOE Contracting Officer or designated representative are reviewed and approved prior to incurrence of costs.
- (d) This Appendix A may be modified from time to time by agreement of the Parties. Either Party may, at any time, request that this Appendix A be revised, and the Parties hereto agree to negotiate in good faith concerning any requested revision. Revisions to this Appendix A shall be accomplished by executing a modification to the prime contract.
- (e) The Laboratory Director may make exceptions to the provisions of Appendix A when such exceptions are in the best interest of contract operations or will facilitate or enhance contract performance and are approved in advance by the Contracting Officer.
- (f) The Contractor, or designated representative, shall promptly furnish all reports and information required or otherwise indicated in this Advance Understanding to the Contracting Officer. The Contractor recognizes that the Contracting Officer or designated representative may make other data requests from time to time and the Contractor agrees to cooperate in meeting requests.
- (g) It is understood that no provision of this Appendix can affect any right guaranteed to a bargaining unit employee by the terms of a Collective Bargaining Agreement.

## SECTION II – COMPENSATION

### (a) Salary Increases.

- (1) An administrative stipend may be paid to an employee who is temporarily assigned responsibilities of a higher level position or other significant duties not part of the employee's regular position. The sum of the stipend and base salary shall not exceed the maximum salary of the higher level position. The Laboratory Director may authorize an administrative stipend up to 15% of the appointee's annual base salary for a period not to exceed one year.
- (2) Notwithstanding any other term or condition set forth in this contract, the Contracting Officer's approval of compensation actions pursuant to the H Clause entitled "Employee Compensation: Pay and Benefits will consider:
  - (A) relative alignment of proposed salaries with subordinate levels;
  - (B) available market data, comparing total-cash compensation; and
  - (C) total compensation relative to the maximum compensation reimbursement level, per the Bipartisan Budget Act of 2013 (BBA), Section 702, Limitation on Allowable Government Contractor Compensation Costs.

### (b) Compensation Increase Plan (CIP).

- (1) The Contractor shall submit the CIP proposal not later than 60 days prior to the start of the new salary cycle.
- (2) In order to pay "on-market-on-average," in the calculation of market position, Laboratory salary data shall be matched to survey data as of the midpoint of the salary cycle (i.e., April 1 for a 10/1-9/30 salary cycle).
- (3) The CIP shall be expressed as a percentage of the projected base payroll for the end of the salary cycle (i.e., September 30 for a 10/1-9/30 salary cycle).

### (c) Payment of Joint Appointees.

Joint Appointees shall be paid at the salary and fringe benefit rates established by the home institution, for the percentage of time worked at the host institution.

### SECTION III – ANCILLARY PAY COMPONENTS

(a) Premium Pay.

The Contractor is authorized to provide shift differentials and other premium pay, such as Call-In Pay, On-Call Pay, meal allowances, and hazardous duty pay, as documented in a Contracting Officer-approved policy.

(b) Extended work week.

When deemed essential to the performance of work under this contract, an extended work week may be established at the Laboratory or any portion thereof.

(c) Medical evacuation services/insurance.

Employees required to perform official travel to foreign countries where local care is substandard (according to U.S. standards) may have coverage that pays for evacuation services to an acceptable medical facility in a proximal location on an urgent or emergency basis. The policy shall cover evacuation, expatriation of remains, and ancillary costs associated with the incident. Costs for such coverage for eligible employees are allowable.

### SECTION IV – PAYMENTS ON SEPARATION

(a) Reduction in Force (RIF).

When employees are terminated due to a RIF, the following costs are allowable:

- (1) Pay in Lieu of Notice. Any employee who is laid off or terminated due to a RIF may be given pay in lieu of the required minimum written notice of termination. Accumulated vacation credit is also paid.
- (2) Severance Pay Benefit. As documented in a Contracting Officer-approved policy.

(b) Payments upon termination other than RIF.

- (1) Sick Leave. The payment of accumulated sick leave upon termination is unallowable.
- (2) Vacation. The Contractor is authorized to pay for accumulated vacation upon termination at the rate in effect as of the date of termination, including any shift differential.

## **SECTION V – LABOR RELATIONS**

(a) Collective bargaining.

Costs of fringe benefits and wages paid to employees under collective bargaining agreements are allowable. All other reasonable costs and expenses, such as expenses relating to the grievance process, arbitration and arbitration awards, and other costs and expenses incurred pursuant to applicable collective bargaining agreements and revisions thereto, are also allowable.

(b) Collective Bargaining Agreements.

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

(c) Bargaining Unit Activity.

Pay for absences from work by employees acting in the capacity of union officers, union stewards and committee members for time spent in handling grievances, negotiating with the Laboratory, and serving on labor management (Laboratory) committees, are allowable.

## **SECTION VI – SETTLEMENT COSTS**

The Contractor is authorized to resolve internal staff settlements and employee grievances up to \$25,000 without the advance approval of the Contracting Officer.

## **SECTION VII – PROGRAMS INVOLVING EMPLOYEE ABSENCE FROM THE WORKPLACE**

(a) Paid Leave.

The Laboratory will provide a reasonable and cost effective paid leave program. Paid leave includes vacation, holiday, sick, jury, bereavement, military, voting and personal leave according to Contracting Officer-approved Laboratory schedules. Only leave categories included in the Benefit Value Study shall be allowable.

(b) Sabbaticals/Temporary Assignments of Laboratory Employees to Other Institutions for Teaching and Research.

The Contractor shall be reimbursed for expenditures consistent with Laboratory policy arising out of an approved employee assignment to another institution for teaching and/or research if the assignment does not exceed one year.

(c) Military Leave.

Military leave and the associated pay is authorized in accordance with Contracting Officer-approved policies, and/or State or Federal law.

(d) Security Leave.

Wages or salaries paid to employees when access authorization is suspended by DOE will be allowable costs under the following conditions:

If a position which does not require access authorization is not available, the Laboratory Director or designee may place the employee on leave with pay at his or her base compensation until final disposition of the case. Leave with pay requires the Contracting Officer's concurrence that no position is available to which the employee might reasonably be transferred.

(e) Temporary Domestic Assignment Allowances.

Temporary domestic assignment allowances shall be consistent with Acquisition Letter (AL) 2018-08 dated May 3, 2018 entitled "Contractor Domestic Extended Personnel Assignments," which may be revised from time to time, and Contractor policy consistent with the aforementioned AL.

## **SECTION VIII – EMPLOYEE TRAINING, EDUCATION AND DEVELOPMENT**

- (a) The Laboratory shall establish training, education and development programs that are consistent with DOE requirements and guidance, industry standards, and other Federal, State, and local regulations. These programs shall ensure that employees are well-qualified and competent to manage facilities and meet mission requirements through administrative, professional, and technical excellence.

(1) Training.

The Laboratory may permit selected employees to attend training classes while receiving full pay in order to enable them to acquire the needed skills to qualify them for more responsible jobs and maintain competence in their fields.

(2) Education.

- (A) The Laboratory may approve and support educational courses taken by employees which serve to improve efficiency and productivity of Laboratory operations, increase needed skills, or prepare employees for increased responsibilities.

(B) An employee or third party on behalf of an employee may be paid for tuition, required textbooks and fees for courses approved in advance by the Laboratory.

3) Development.

The Contractor shall be reimbursed for the cost of development programs, including but not limited to, apprenticeship training, supervisory training, management development, career updating and redirection, and work-study and other programs supporting the development of staff in fields of interest to the Laboratory.

## **SECTION IX – EMPLOYEE PROGRAMS**

(a) Service/Retirement/Non-Performance Awards.

The Contractor is authorized to provide monetary or non-monetary recognition for achievements not based on performance. Awards may include, for example, Length of Service/Retirement Recognition; Safety Awards; Patent Awards; Suggestion Program.

(b) Performance Award Programs.

The Contractor may recognize employees or groups of employees who have distinguished themselves by their significant contributions and outstanding performance in the course of their work. Awards may be provided to employees or groups of employees in the form of cash. Additionally, noteworthy achievements and special efforts may be recognized by the presentation of plaques, certificates, and memorabilia.

(c) Cost of Health Services.

The Contractor shall be reimbursed for the costs of operating a Health Unit for Laboratory employees, including but not limited to the following: Pre-employment physicals and other medical examinations required to meet Laboratory employment requirements, medical care for occupational injuries and to provide relief for minor physical complaints of employees while at the Laboratory, and health examinations provided as a health service for employees.

(d) Other.

(1) The Contractor may develop, administer and support a variety of employee programs. These programs may include athletic, cultural, and family activities. Participant fees may be collected to partially offset the cost of some or all of these activities. Appropriate facilities, utilities, and maintenance may be provided by the Laboratory. Entertainment costs,

including costs of amusement, diversions, and social activities are unallowable, as well as directly related costs such as tickets, meals, lodging, rentals, transportation and gratuities.

- (2) Wellness Program. Costs of a Wellness Program to promote employee health and fitness are allowable.
- (3) Employee Assistance Program. The Contractor shall (1) maintain a program of preventive services, education, short-term counseling, coordination with and referrals to outside agencies, and follow-up upon return to work that conforms to the requirements of 10 CFR 707.6, Employee Assistance, Education, and Training; (2) submit for approval by the Contracting Officer any changes to the employee assistance program implementation plan; and (3) prepare and submit information to DOE concerning Employee Assistance Program services as requested by the Contracting Officer. Such reports shall not include individual identifiers.

## **SECTION X - COSTS OF RECRUITING PERSONNEL**

- (a) The Contractor may incur costs for the recruitment of personnel, as follows:
  - (1) Costs of advertising and agency and consultant fees.
  - (2) Recruiting Expenses. The Laboratory may reimburse, consistent with other provisions of this contract, employees traveling for recruiting purposes, the actual cost incurred for the following expenses: transportation, lodging, and meals for prospective employees and, when approved, for spouses or representatives of academic institutions, professional societies and other scientific organizations and incidental expenses incurred in recruiting.
  - (3) New or prospective employees who have been offered and have accepted a position, and who are required to take a pre-placement physical examination, shall be reimbursed for costs of the physical examination.
  - (4) Costs associated with pre-employment screening shall be allowable.
- (b) Recruitment/Retention Tools.
  - (1) The Contractor may pay a sign-on bonus to recruit employees with critical skills.
  - (2) An annual retention bonus is authorized to retain employees with critical skills or whose expertise is critical to the completion of a specific project.



- (3) The Contractor is authorized to provide service credit to critical skill new-hires for previous relevant experience at another DOE facility or external organization, excluding defined benefit pension plans. Credited service may be used to establish eligibility for, or determine accrual of, service-based benefits (i.e., vacation accruals, vesting, or severance – unless severance has been paid for prior service as indicated in the H Clause entitled “Employee Compensation: Pay and Benefits), in accordance with the Contractor’s policies.

**SECTION XI – REDUCTIONS IN CONTRACTOR EMPLOYMENT**

Reductions in employment will be conducted in accordance with the Contractor's Contracting Officer-approved policies and practices and in accordance with applicable Departmental guidance on workforce restructuring, as revised from time to time.

(a) Workforce Restructuring Actions.

- (1) The Contractor will notify or request approval of workforce restructuring actions in accordance with the following:

RESTRUCTURING ACTION	# OF EMPLOYEES POTENTIALLY IMPACTED	ACTION REQUIRED
Voluntary	100 or more	CO Notification
Involuntary	100 or more	CO Approval

- (A) The Contractor is only required to provide notification of Self-Select Voluntary Separation Programs (SSVSP) if consistent with the following parameters:

1. In accordance with approved laboratory/contractor policies;
2. No enhanced benefits (severance or pension);
3. No backfilling (internally or externally) or re-employment of employees for a one-year period after severance is paid. If an employee is hired or rehired prior to the one-year period, the employee may be required to pay back, to the Contractor who provided the severance payment, all or a pro-rata amount of the severance received under the SSVSP. There is no backfilling where a separating employee is replaced by an internal candidate so long as:

- 1) The separating employee is leaving voluntarily;

- 2) The internal replacement is a regular, permanent employee on the contractor's payroll, not a temporary hire, staff augmentee, or someone serving under a post-doctoral program, etc.;
  - 3) The replacement results in a net reduction in headcount and costs of regular employees; and
  - 4) The replacement is accomplished in an otherwise legally compliant manner, including no unlawful intent to discriminate based upon age.
4. A business case is submitted 5 business days in advance of notification date that includes the maximum number of voluntary reductions, maximum dollars, positions/skills impacted; reasons reductions are needed, including how conducting a SSVSP will better position the Contractor to conduct the mission work, copy of self-select waivers, and communication plan; and
  5. Voluntary reductions are offered to all eligible employees in an operational unit (i.e., organization, direct/indirect category, etc.).
- (B) Actions requiring approval will additionally require a workforce restructuring plan (Specific Plan) prepared in accordance with DOE policy.
- (C) Approval actions shall be submitted a minimum of 10 business days prior to announcement to employees.
- (D) The Contracting Officer will review and approve any Specific Plan or diversity analysis submitted for review affecting the reduction of 100 or more employees through an involuntary separation action within 10 business days after submission of a complete package by the Contractor unless the Contractor is notified of issues necessitating an extension of time. Should DOE request additional information from the Contractor regarding any Specific Plan or diversity analysis, the Contractor will respond to such request within 3 business days.
- (E) The Contractor must perform an adverse impact analysis (also known as a diversity analysis) as part of its determination to undertake involuntary separation action(s). A copy of the diversity analysis for involuntary separation action(s) affecting 100 or more contractor employees within a rolling 12-month period shall be submitted to the DOE site counsel, as applicable, prior to notification of employees selected for involuntary separation.

- (F) Waivers or self-select forms that vary from those provided in DOE policy documents are subject to approval by DOE. The templates for the contractor Involuntary Separation Plan, as well as the General Release and Waiver Forms, are available online at:  
<http://www.energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension>.
  - (G) The Contractor is responsible and accountable for conducting and defending all voluntary and involuntary separation actions in compliance with applicable laws, regulations, and the contract terms and conditions.
- (2) Any employee who volunteers for layoff or retirement during a time period in which the Contractor has a DOE approved active reduction in force plan will be eligible for severance pay provided the termination is accepted by Laboratory management and results in the retention of an employee who otherwise would have been laid off.
    - (A) If DOE approval is not required, severance may be paid to an employee who volunteers for layoff or retirement if contractor management has approved the restructuring action and the termination results in the retention of an employee who otherwise would be laid off.
    - (B) Severance is not payable to an employee who volunteers for layoff or retirement if the termination is not associated with a restructuring action approved and initiated by contractor management.
  - (3) The Contractor, to the extent practicable, shall provide outplacement services in the forms of skills assessment and resume preparation to those employees who are involuntarily separated due to a layoff.
- (b) Displaced Worker Medical Benefit.

Employees placed on layoff status who have completed the entry probation period may be eligible for continued participation in the health benefits program with premiums supplemented by the Contractor based on the following schedule:

- (1) First Year. The Contractor's contribution for an active employee
- (2) Second Year. One half of the Contractor's Cobra premium
- (3) Third and subsequent years. Reasonable administrative costs that exceed the two percent administrative fee paid by the displaced worker.

Eligibility is determined in accordance with Departmental policy on workforce restructuring.

## SECTION XII – EMPLOYEE BENEFITS

- (a) Energy Employees' Occupational Illness Compensation Program Act (EEOICPA).

The Laboratory agrees to comply with requests for information, records, and other program requirements to ensure the orderly administration and adjudication of claims under the EEOICPA.

- (b) Dependent Care.

The Laboratory is authorized to provide a dependent care benefit program as a fringe benefit, documented in a Contracting Officer approved policy.

If applicable, the Contractor shall sub-contract the operation of a dependent care center. The facility must be for the exclusive or nonexclusive use of Laboratory employees. Expense items such as utilities, maintenance, food services, medical services, or supplies already used in support of site operations and readily available are allowable. The cost of meals shall not be allowable.

## **APPENDIX B**

### **PERFORMANCE EVALUATION AND MEASUREMENT PLAN**

(The FY 2024 PEMP is provided for informational purposes only. The FY 2025 PEMP will be included at contract award.)

**Applicable to the Operations of  
Fermi National Accelerator Laboratory**



U.S. DEPARTMENT OF  
**ENERGY**

Office of  
Science

## Performance Evaluation and Measurement Plan

Fiscal Year 2024

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## INTRODUCTION

This document, the Performance Evaluation and Measurement Plan (PEMP), primarily serves as DOE's Quality Assurance/Surveillance Plan (QASP) for the evaluation of Fermi Research Alliance, LLC (hereafter referred to as "the Contractor") performance regarding the management and operations of the Fermi National Accelerator Laboratory (hereafter referred to as "the Laboratory") for the evaluation period from October 1, 2023, through September 30, 2024. The performance evaluation provides a standard by which to determine whether the Contractor is managerially and operationally in control of the Laboratory and is meeting the mission requirement and performance expectations/objectives of the Department as stipulated within this contract.

This document also describes the distribution of the total available performance-based fee and the methodology for determining the amount of fee earned by the Contractor as stipulated within the clauses entitled, "Determining Total Available Performance Fee and Fee Earned," "Conditional Payment of Fee, Profit, or Incentives," and "Total Available Fee: Base Fee Amount and Performance Fee Amount." In partnership with the Contractor and other key customers, the Department of Energy (DOE) Headquarters (HQ) and the Site Office have defined the measurement basis that serves as the Contractor's performance-based evaluation and fee determination.

The Performance Goals (hereafter referred to as Goals), Performance Objectives (hereafter referred to as Objectives) and set of notable outcomes discussed herein were developed in accordance with contract expectations set forth within the contract. The notable outcomes for meeting the Objectives set forth within this plan have been developed in coordination with HQ program offices as appropriate. Except as otherwise provided for within the contract, the evaluation and fee determination will rest solely on the Contractor's performance within the Performance Goals and Objectives set forth within this plan.

The overall performance against each Objective of this performance plan, to include the evaluation of notable outcomes, shall be evaluated jointly by the appropriate HQ office, major customer and/or the Site Office as appropriate. This cooperative review methodology will ensure that the overall evaluation of the Contractor results in a consolidated DOE position taking into account specific notable outcomes as well as all additional information available to the evaluating office. The Site Office shall work closely with each HQ program office or major customer throughout the year in evaluating the Contractor's performance and will provide observations regarding programs and projects as well as other management and operation activities conducted by the Contractor throughout the year.

Section I provides information on how the performance rating (grade) for the Contractor, as well as the performance-based incentives fee earned (if any), will be determined. As applicable, also provides information on the award term eligibility requirements.

Section II provides the detailed information concerning each Goal, its corresponding Objectives, and notable outcomes identified, along with the weightings assigned to each Goal and Objective and a table for calculating the final grade for each Goal.



**I. DETERMINING THE CONTRACTOR'S PERFORMANCE RATING, PERFORMANCE-BASED FEE AND AWARD TERM ELIGIBILITY**

The FY 2024 Contractor performance grade for each Goal will be determined based on the weighted sum of the individual scores earned for each of the Objectives described within this document for Contractor/Laboratory Leadership and for Management and Operations (M&O). For each Science and Technology (S&T) Goal, an initial weighted sum will be calculated analogously for each evaluating office, and a cost-based weighted sum of these initial sums will determine the Contractor performance grade. Each Goal is composed of two or more weighted Objectives. Additionally, a set of notable outcomes has been identified to highlight key aspects/areas of performance deserving special attention by the Contractor for the upcoming fiscal year. Each notable outcome is linked to one or more Objectives, and failure to meet expectations against any notable outcome will result in a grade less than B+ for that Objective(s). That is, if the contractor fails to meet expectations against a notable outcome tied to an Objective under Goal 1.0, 2.0, or 3.0, the SC program office that assigned the notable outcome shall award a grade less than “B+” for the Objective(s) to which the notable outcome is linked; and if the contractor fails to meet expectations against a notable outcome tied to an Objective under Goal 4.0, 5.0, 6.0, 7.0 or 8.0, SC shall award a grade less than “B+” for the Objective(s) to which the notable outcome is linked. Performance above expectations against a notable outcome will be considered in the context of the Contractor’s entire performance with respect to the relevant Objective. The following section describes SC’s methodology for determining the Contractor’s grades at the Objective level.

Performance Evaluation Methodology:

The purpose of this section is to establish a methodology to develop grades at the Objective level. Each evaluating office shall provide a proposed grade and corresponding numerical score for each Objective (see Figure 1 for SC’s scale). Each evaluation will measure the degree of effectiveness and performance of the Contractor in meeting the corresponding Objectives.

Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F
<b>Total Score</b>	<b>4.3-4.1</b>	<b>4.0-3.8</b>	<b>3.7-3.5</b>	<b>3.4-3.1</b>	<b>3.0-2.8</b>	<b>2.7-2.5</b>	<b>2.4-2.1</b>	<b>2.0-1.8</b>	<b>1.7-1.1</b>	<b>0.8-1.0</b>	<b>0.7-0</b>

**Figure 1. FY 2024 Contractor Letter Grade Scale**

For the three S&T Goals (1.0 – 3.0) the Contractor shall be evaluated against the defined levels of performance provided for each Objective under the S&T Goals. The Contractor performance under Goal 4.0 will also be evaluated using the defined levels of performance described for the four Objectives under Goal 4.0. The descriptions for these defined levels of performance are included in Section II.

It is the DOE’s expectation that the Contractor provides for and maintains management and operational (M&O) systems that efficiently and effectively support the current mission(s) of the Laboratory and assure the Laboratory’s ability to deliver against DOE’s future needs. In evaluating the Contractor’s performance DOE shall assess the degree of effectiveness and performance in meeting each of the Objectives provided under each of the Goals. For the four M&O Goals (5.0 – 8.0) DOE will rely on a combination of the information through the Contractor’s own assurance systems, the ability of the Contractor to demonstrate the validity of this information, and DOE’s own independent assessment of the Contractor’s performance across the spectrum of its responsibilities. The latter might include, but is not limited to operational awareness (daily oversight) activities; formal assessments conducted; “For Cause” reviews (if any); and other outside agency reviews (OIG, GAO, DCAA, etc.).

The mission of the Laboratory is to deliver the science and technology needed to support Departmental missions and other sponsors’ needs. Operational performance at the Laboratory meets DOE’s expectations

(defined as the grade of B+) for each Objective if the Contractor is performing at a level that fully supports the Laboratory’s current and future science and technology mission(s). Performance that does, or has the potential to, 1) adversely impact the delivery of the current and/or future DOE/Laboratory mission(s), 2) adversely impact the DOE and or the Laboratory’s reputation, or 3) fail to provide the competent people, necessary facilities and robust systems necessary to ensure sustainable performance, shall be graded below expectations as defined in Figure I-1, below.

The Department sets our expectations high, and expects performance at that level to optimize the efficient and effective operation of the Laboratory. Thus, the Department does not expect routine Contractor performance above expectations against the M&O Goals (5.0 – 8.0). Performance that might merit grades above B+ would need to reflect a Contractor’s significant contributions to the management and operations at the system of Laboratories, or recognition by external, independent entities as exemplary performance.

Definitions for the grading scale for the Goal 5.0 – 8.0 Objectives are provided in Figure I-1, below:

Letter Grade	Numerical Grade	Definition
A+	4.3-4.1	Significantly exceeds expectations of performance against all aspects of the Objective in question. The Contractor’s systems function at a level that fully supports the Laboratory’s current and future science and technology mission(s). Performance is notable for its significant contributions to the management and operations across the SC system of laboratories, and/or has been recognized by external, independent entities as exemplary.
A	4.0-3.8	Notably exceeds expectations of performance against all aspects of the Objective in question. The Contractor’s systems function at a level that fully supports the Laboratory’s current and future science and technology mission(s). Performance is notable for its contributions to the management and operations across the SC system of laboratories, and/or as been recognized by external, independent entities as exemplary.
A-	3.7-3.5	Exceeds expectations of performance against all aspects of the Objective in question. The Contractor’s systems function at a level that fully supports the Laboratory’s current and future science and technology mission(s).
B+	3.4-3.1	Meets expectations of performance against all aspects of the Objective in question. The Contractor’s systems function at a level that fully supports the Laboratory’s current and future science and technology mission(s). No performance has, or has the potential to, adversely impact 1) the delivery of the current and/or future DOE/Laboratory mission(s), 2) the DOE and/or the Laboratory’s reputation, or does not 3) provide a sustainable performance platform.
B	3.0 -2.8	Just misses meeting expectations of performance against a few aspects of the Objective in question. In a few minor instances, the Contractor’s systems function at a level that does not fully support the Laboratory’s current and future science and technology mission, or provide a sustainable performance platform.
B-	2.7-2.5	Misses meeting expectations of performance against several aspects of the Objective in question. In several areas, the Contractor’s systems function at a level that does not fully support the Laboratory’s current and future science and technology mission, or provide a sustainable performance platform.
C+	2.4-2.1	Misses meeting expectations of performance against many aspects of the Objective in question. In several notable areas, the Contractor’s systems function at a level that does not fully support the Laboratory’s current and future science and technology mission or provide a sustainable performance platform, and/or have affected the reputation of the Laboratory or DOE.
C	2.0-1.8	Significantly misses meeting expectations of performance against many aspects of the Objective in question. In many notable areas, the Contractor’s systems do not support the Laboratory’s current and future science and technology mission, nor provide a sustainable performance platform and may affect the reputation of the Laboratory or DOE.

C-	1.7- 1.1	Significantly misses meeting expectations of performance against most aspects of the Objective in question. In many notable areas, the Contractor’s systems demonstrably hinder the Laboratory’s ability to deliver on current and future science and technology mission, and have harmed the reputation of the Laboratory or DOE.
D	1.0-0.8	Most or all expectations of performance against the Objective in question are missed. Performance failures in this area have affected all parts of the Laboratory; DOE leadership engagement is required to deal with the situation and help the Contractor.
F	0.7-0	All expectations of performance against the Objective in question are missed. Performance failures in this area are not recoverable by the Contractor or DOE.

**Figure I-1. Letter Grade and Numerical Grade Definitions for Objectives under M&O Goals**

Calculating Individual Goal Scores and Letter Grades:

Each Objective is assigned the earned numerical score by each evaluating office as stated above. For an evaluating office, the Goal score is then computed by multiplying each Objective numerical score under that Goal by the weight assigned to that Objective by that office, and then adding these values together. For Goals 4.0-8.0, this determines the overall Goal score. For Goals 1.0-3.0, the overall Goal score is calculated by multiplying each evaluating office’s Goal score by the office’s cost-based weight, and then adding them. For the purpose of determining the eight Goal grades, the unrounded raw overall numerical score for each Goal will be rounded to the nearest tenth of a point using the standard rounding convention discussed below following Figure 2, and then will be compared to Figure 1. A set of tables is provided at the end of each Performance Goal section of this document to assist in the calculation from Objective numerical scores to the Goal grade. No overall rollup grade shall be provided.

The eight Performance Goal grades shall be used to create a report card for the laboratory (see Figure 2, below).

<b>Performance Goal</b>	<b>Grade</b>
1.0 Mission Accomplishment	
2.0 Design, Fabrication, Construction and Operations of Research Facilities	
3.0 Science and Technology Program Management	
4.0 Sound and Competent Leadership and Stewardship of the Laboratory	
5.0 Integrated Safety, Health, and Environmental Protection	
6.0 Business Systems	
7.0 Operating, Maintaining, and Renewing Facility and Infrastructure Portfolio	
8.0 Integrated Safeguards and Security Management and Emergency Management Systems	

**Figure 2. Laboratory Report Card**

Although rounded to convert to letter grades, the unrounded raw numerical score from each calculation shall be carried through to the next stage of the calculation process. The unrounded raw numerical score for weighted final S&T and weighted final M&O will be rounded to the nearest tenth of a point for purposes of determining fee. A standard rounding convention of x.44 and less rounds down to the nearest tenth (here, x.4), while x.45 and greater rounds up to the nearest tenth (here, x.5).

Determining the Amount of Performance-Based Fee Earned:

SC uses the following process to determine the amount of performance-based fee earned by the contractor. The overall Goal scores for each S&T Performance Goal shall be used to determine an initial numerical score for S&T (see Table A, below), and the overall Goal scores for each M&O Performance Goal shall be used to determine an initial numerical M&O score (see Table B, below).

S&T Performance Goal	Numerical Score	Weight <sup>1</sup>		
1.0 Mission Accomplishment		≥30%		
2.0 Design, Fabrication, Construction and Operation of Research Facilities				
3.0 Science and Technology Program Management		25%		
<b>Initial S&amp;T Score</b>				

**Table A: Fiscal Year 2024 Contractor Evaluation Initial S&T Score Calculation**

M&O Performance Goal	Numerical Score	Weight		
5.0 Integrated Safety, Health, and Environmental Protection		30%		
6.0 Business Systems		30%		
7.0 Operating, Maintaining, and Renewing Facility and Infrastructure Portfolio		25%		
8.0 Integrated Safeguards and Security Management and Emergency Management Systems		15%		
<b>Initial M&amp;O Score</b>				

**Table B. Fiscal Year 2024 Contractor Evaluation Initial M&O Score Calculation**

These initial scores will then be adjusted based on the numerical score for Goal 4.0 (see Table C, below).

	Numerical Score	Weight		
Initial S&T Score	TBD	75%		
Goal 4.0	TBD	25%		
<b>Final S&amp;T Score</b>				
Initial M&O Score	TBD	75%		
Goal 4.0	TBD	25%		
<b>Final M&amp;O Score</b>				

**Table C. Fiscal Year 2024 Final S&T and M&O Score Calculation**

<sup>1</sup> For Goals 1.0 and 2.0, the weights are based on fiscal year costs for each program distributed between Goals 1.0 and 2.0; however, a minimum weight of 30% for Goal 1.0 is required regardless of program distribution. For Goal 3.0, the weight is set as a fixed percentage for all laboratories.

The percentage of the available performance-based fee that may be earned by the Contractor shall be determined based on the final score for S&T (see Table C) and then compared to Figure 3, below. The final score for M&O from Table C shall then be utilized to determine the final fee multiplier (see Figure 3), which shall be utilized to determine the overall amount of performance-based fee earned for FY 2024 as calculated within Table D.

<b>Overall Final Score for either S&amp;T or M&amp;O from Table C.</b>	<b>Percent S&amp;T Fee Earned</b>	<b>M&amp;O Fee Multiplier</b>
4.3	<b>100%</b>	<b>100%</b>
4.2		
4.1		
4.0	<b>97%</b>	<b>100%</b>
3.9		
3.8		
3.7	<b>94%</b>	<b>100%</b>
3.6		
3.5		
3.4	<b>91%</b>	<b>100%</b>
3.3		
3.2		
3.1	<b>88%</b>	<b>95%</b>
3.0		
2.9		

Overall Final Score for either S&T or M&O from Table C.	Percent S&T Fee Earned	M&O Fee Multiplier
2.8		
2.7		
2.6	85%	90%
2.5		
2.4		
2.3	75%	85%
2.2		
2.1		
2.0	50%	75%
1.9		
1.8		
1.7	0%	60%
1.6		
1.5		
1.4		
1.3		
1.2		
1.1		
1.0 to 0.8	0%	0%
0.7 to 0.0	0%	0%

**Figure 3. Performance-Based Fee Earned Scale**

Overall Fee Determination	
Percent S&T Fee Earned	
M&O Fee Multiplier	x
Overall Earned Performance-Based Fee	

**Table D. Final Percentage of Performance-Based Fee Earned Determination**

The Federal Acquisition Regulations (FAR) requirements for using and administering cost-plus-award-fee contracts were modified to provide for a five-level adjectival grading system with associated levels of available fee.<sup>1</sup> SC has addressed the FAR Part 16 language by mapping its standard numerical scores and associated fee determinations to the FAR Adjectival Rating System, as noted in Figure 4.

<sup>1</sup> See Policy Flash 2010-05, *Federal Acquisition Circular 2005-37*.

<b>Range of Overall Final Score for S&amp;T from Figure 3.</b>	<b>FAR Adjectival Rating</b>	<b>Maximum Performance-Fee Pool Available to be Earned</b>
<b>3.1 to 4.3</b>	<b>Excellent</b>	<b>100%</b>
<b>2.5 to 3.0</b>	<b>Very Good</b>	<b>88%</b>
<b>2.1 to 2.4</b>	<b>Good</b>	<b>75%</b>
<b>1.8 to 2.0</b>	<b>Satisfactory</b>	<b>50%</b>
<b>0.0 to 1.7</b>	<b>Unsatisfactory</b>	<b>0%</b>

**Figure 4. Crosswalk of SC Numerical Scores and the FAR Part 16 Adjectival Rating System**

Adjustment to the Letter Grade and/or Performance-Based Fee Determination:

The lack of performance objectives and notable outcomes in this plan does not diminish the need to comply with minimum contractual requirements. Although the performance-based Goals and their corresponding Objectives shall be the primary means utilized in determining the Contractor’s performance grade and/or amount of performance-based fee earned, the Contracting Officer may unilaterally adjust the rating and/or reduce the otherwise earned fee based on the Contractor’s performance against all contract requirements as set forth in the Prime Contract. While reductions may be based on performance against any contract requirement, specific note should be made to contract clauses which address reduction of fee including, Standards of Contractor Performance Evaluation, DEAR 970.5215-1 – Total Available Fee: Base Fee Amount and Performance Fee Amount, and Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts. Data to support rating and/or fee adjustments may be derived from other sources to include, but not limited to, operational awareness (daily oversight) activities; “For Cause” reviews (if any); and other outside agency reviews (OIG, GAO, DCAA, etc.), as needed.

The adjustment of a grade and/or reduction of otherwise earned fee will be determined by the severity of the performance failure and consideration of mitigating factors. DEAR 970.5215-3 Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts is the mechanism used for reduction of fee as it relates to performance failures related to safeguarding of classified information and to adequate protection of environment, health and safety. Its guidance can also serve as an example for reduction of fee in other areas.

The final Contractor performance-based grades for each Goal and fee earned determination will be contained within a year-end report, documenting the results from the DOE review. The report will identify areas where performance improvement is necessary and, if required, provide the basis for any performance-based rating and/or fee adjustments made from the otherwise earned rating/fee based on Performance Goal achievements.

Determining Award Term Eligibility: The Prime contract contains a non-monetary performance incentive in Section F “Deliveries or Performance” at Clause F.2. The base term of the prime contract was five years expiring December 31, 2011. The contract has been extended up to and including December 31, 2024. Additional Award Term is not available under this contract.

## II. PERFORMANCE GOALS, OBJECTIVES & NOTABLE OUTCOMES

### **Background**

The current performance-based management approach to oversight within DOE has established a new culture within the Department with emphasis on the customer-supplier partnership between DOE and the laboratory contractors. It has also placed a greater focus on mission performance, best business practices, cost management, and improved contractor accountability. Under the performance-based management system the DOE provides clear direction to the laboratories and develops annual performance plans (such as this one) to assess the contractors’ performance in meeting that direction in accordance with contract requirements. The DOE policy for implementing performance-based management includes the following guiding principles:

- Performance objectives are established in partnership with affected organizations and are directly aligned to the DOE strategic goals;
- Resource decisions and budget requests are tied to results; and
- Results are used for management information, establishing accountability, and driving long-term improvements.

The performance-based approach focuses the evaluation of the Contractor’s performance against these Performance Goals. Progress against these Goals is measured through the use of a set of Objectives. The success of each Objective will be measured based on demonstrated performance by the laboratory, and on a set of notable outcomes that focus laboratory leadership on the specific items that are the most important initiatives and highest risk issues the laboratory must address during the fiscal year. These notable outcomes should be objective, measurable, and results-oriented to allow for a definitive determination of whether or not the specific outcome was achieved at the end of the year.

### **Performance Goals, Objectives, and Notable Outcomes**

The following sections describe the Performance Goals, their supporting Objectives, and associated notable outcomes for FY 2024.



## **GOAL 1.0 Provide for Efficient and Effective Mission Accomplishment**

**The science and technology programs at the Laboratory produce high-quality, original, and creative results that advance science and technology; demonstrate sustained scientific progress and impact; receive appropriate external recognition of accomplishments; and contribute to overall research and development goals of the Department and its customers.**

The weight of this Goal is TBD%.

The Provide for Efficient and Effective Mission Accomplishment Goal measures the overall effectiveness and performance of the Contractor in delivering science and technology results which contribute to and enhance the DOE's (or other relevant supporting agencies') mission of protecting our national and economic security by providing world-class scientific research capacity and advancing scientific knowledge by supporting world-class, peer-reviewed scientific results, which are recognized by others.

Each Objective within this Goal is to be assigned the appropriate numerical score by the Office of Science Program Offices, other cognizant HQ Program Offices, and other customers as identified below. The Goal score from each HQ Program Office and/or customer is computed by multiplying each Objective numerical score by the associated weight assigned by that Office/customer, and summing them (see Table 1.1).

The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual cost for FY 2024.

- Office of High Energy Physics (HEP)
- Workforce Development for Teachers and Scientists (WDTS)
- Accelerator R&D and Production (ARDAP)

The overall Performance Goal score and grade will be determined by multiplying the Goal score assigned by each of the offices identified above by the cost-based weightings identified for each and then summing them (see Table 1.2, below). The cost-based weights to be utilized for determining the overall score will be determined following the end of the performance period and will be based on actual cost for FY 2024. The overall score earned is then compared to Table 1.3 to determine the overall letter grade for this Goal. The Contractor's success in meeting each Objective shall be determined based on the Contractor's performance as viewed by the Office of Science Program Offices, other cognizant HQ Program Offices, and other customers for which the Laboratory conducts work. Should one or more of the HQ Program Offices choose not to provide an evaluation for this Goal and its corresponding Objectives, the weighting for the remaining HQ Program Offices shall be recalculated based on their percentage of cost for FY2024 as compared to the total cost for those remaining HQ Program Offices.

### **Objectives**

#### **1.1 Provide Science and Technology Results with Meaningful Impact on the Field**

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- Performance of the Laboratory with respect to proposed research plans;
- Performance of the Laboratory with respect to community impact and peer review; and
- Performance of the Laboratory with respect to impact to DOE (or other customer) mission needs.

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective. The evaluator(s) may consider the following as measured through progress

reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.

- Impact of publications on the field, as measured primarily by peer review;
- Impact of S&T results on the field, as measured primarily by peer review;
- Impact of S&T results outside the field indicating broader interest;
- Impact of S&T results on DOE or other customer mission(s);
- Successful stewardship of mission-relevant research areas;
- Delivery on proposed S&T plans;
- Significant awards (Nobel Prizes, R&D 100, FLC, etc.);
- Invited talks, citations, making high-quality data available to the scientific community; and
- Development of tools and techniques that become standards or widely-used in the scientific community

Letter Grade	Definition
A-	In addition to satisfying the conditions for B+ <ul style="list-style-type: none"> <li>• There are <i>important examples</i> where the Laboratory <i>exceeded the expectations</i> of the proposed research plans.</li> <li>• <i>Significant areas</i> of S&amp;T conducted at the Laboratory are of <i>exceptional or outstanding</i> merit and quality.</li> <li>• S&amp;T conducted at the Laboratory <i>significantly impact</i> DOE or other customer missions.</li> </ul>
B+	The Laboratory has achieved each of the following objectives: <ul style="list-style-type: none"> <li>• The Laboratory has successfully executed proposed research plans.</li> <li>• S&amp;T conducted at the Laboratory are of <i>high</i> scientific merit and quality.</li> <li>• S&amp;T conducted at the Laboratory <i>advance</i> DOE or other customer missions.</li> </ul>
B	<ul style="list-style-type: none"> <li>• The Laboratory has successfully executed proposed research plans.</li> <li>• S&amp;T conducted at the Laboratory <i>advance</i> DOE or other customer missions.</li> </ul> BUT the Laboratory fails to meet the conditions for B+ for <i>at least one</i> of the following reasons: <ul style="list-style-type: none"> <li>• S&amp;T conducted at the Laboratory are <i>not uniformly of high</i> merit and quality OR <i>some areas of research, previously supported, have become uncompetitive</i> OR <i>the Laboratory does not produce sufficiently competitive proposals to receive program support at a level commensurate with its unique capabilities.</i></li> </ul>
B-	The Laboratory fails to meet the conditions for B+ for at least one of the following reasons: <ul style="list-style-type: none"> <li>• The Laboratory has failed to successfully execute proposed research plans but contingencies were in place such that no funding was or will be terminated. OR S&amp;T conducted at the Laboratory does little to advance DOE or other customer missions.</li> <li>• Significant areas of S&amp;T conducted at the Laboratory are not of high merit and quality OR some areas of research, previously supported, have become uncompetitive OR the Laboratory do not produce sufficiently competitive proposals to receive program support at a level commensurate with its unique capabilities.</li> </ul>
C	The Laboratory fails to meet the conditions for B+ for at least one of the following reasons: <ul style="list-style-type: none"> <li>• In several significant aspects, the Laboratory failed to deliver on proposed research plans using available resources such that some funding was or will be terminated OR S&amp;T conducted at the Laboratory failed to contribute to DOE or other customer missions.</li> <li>• Significant areas of S&amp;T conducted at the Laboratory are of poor merit and quality OR some areas of research, previously supported, have become uncompetitive AND the Laboratory does not produce sufficiently competitive proposals to receive program support at a level commensurate with its unique capabilities.</li> </ul>

D	<p>The Laboratory fails to meet the conditions for B+ for at least one of the following reasons:</p> <ul style="list-style-type: none"> <li>• Multiple program elements at the Laboratory failed to deliver on proposed research plans using available resources such that significant funding was or will be terminated.</li> <li>• Multiple significant areas of S&amp;T conducted at the Laboratory are of poor merit and quality OR some areas of research, previously supported, have become uncompetitive AND the Laboratory does not produce sufficiently competitive proposals to receive program support at a level commensurate with its unique capabilities.</li> <li>• S&amp;T conducted at the Laboratory failed to contribute to DOE or other customer missions.</li> </ul>
F	<p>The Laboratory fails to meet the conditions for B+ for <i>at least one</i> of the following reasons:</p> <ul style="list-style-type: none"> <li>• <i>Multiple program elements at the Laboratory failed to deliver on proposed research plans using available resources resulting in total termination of funding.</i></li> <li>• <i>Multiple significant areas of S&amp;T conducted at the Laboratory are of poor merit and quality OR some areas of research, previously supported, have become uncompetitive AND the Laboratory does not produce sufficiently competitive proposals to receive program support at a level commensurate with its unique capabilities OR the Laboratory has been found to have engaged in gross scientific incompetence and/or scientific fraud.</i></li> <li>• S&amp;T conducted at the Laboratory <i>failed to contribute to DOE or other customer missions.</i></li> </ul>

### 1.2 Provide Quality Leadership in Science and Technology that Advances Community Goals and DOE Mission Goals.

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- Innovativeness / Novelty of research ideas put forward by the Laboratory;
- Extent to which Laboratory staff members take on substantive or formal leadership roles in their community;
- Extent to which Laboratory staff members take on formal leadership roles in DOE, SC and/or other customer activities;
- Extent to which Laboratory staff members contribute thoughtful and thorough peer reviews and other research assessments as requested by DOE, SC or other supporting customers; and
- Extent to which Laboratory staff members champion Laboratory and Community goals to foster diversity, equity, inclusion, and accessibility in the work environment and in the S&T field.

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective. The evaluator(s) may consider the following as measured through progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.:

- Willingness to pursue novel approaches and/or demonstration of innovative solutions to problems;
- Willingness to take on high-risk/high payoff/long-term research problems, evidence that previous risky decisions by the PI/research staff have proved to be correct and are paying off;
- The uniqueness and challenge of science pursued, recognition for doing the best work in the field;
- Extent and quality of collaborative efforts;
- Staff members visible in leadership positions in the scientific community;
- Involvement in professional organizations, National Academies panels and workshops;
- Effectiveness in driving the direction and setting the priorities of the community in a research field;
- Success in competition for resources; and
- Extent and quality of efforts to create new opportunities for the support and mentoring of project personnel (students, postdocs, and/or research staff) from demographic backgrounds historically underrepresented in the field.

Letter Grade	Definition
A+	<p>In addition to satisfying the conditions for B+</p> <ul style="list-style-type: none"> <li>• Laboratory staff members have <i>leadership positions</i> in professional organizations AND <i>staff has contributing role in National Academy or equivalent panels to discuss further research directions</i>;</li> <li>• Laboratory staff members have <i>leadership positions</i> in DOE and/or in other supporting agencies sponsored workshops and strategic planning activities.</li> <li>• The Laboratory program consistently produces and submits competitive proposals that challenge convention and open <i>significant new fields</i> for research that are well aligned with DOE or other supporting agency mission needs and <i>the Laboratory has a strong recognized role in setting priorities and driving the direction in key research areas</i>.</li> <li>• Laboratory staff hold <i>leadership positions</i> in multi-institutional research collaborations.</li> </ul>
A	<p>In addition to satisfying the conditions for B+</p> <ul style="list-style-type: none"> <li>• Laboratory staff members have <i>leadership positions</i> in professional organizations OR <i>staff has contributing role in National Academy or equivalent panels to discuss further research directions</i>;</li> <li>• Laboratory staff members have <i>leadership positions</i> in DOE and/or other supporting agency-sponsored workshops and strategic planning activities.</li> <li>• The Laboratory program consistently submits competitive proposals that challenge convention and open <i>significant new avenues</i> for research that are well aligned with DOE or other supporting agencies mission needs.</li> <li>• Laboratory staff hold <i>leadership positions</i> in multi-institutional research collaborations.</li> </ul>
B+	<p>The Laboratory has achieved each of the following objectives:</p> <ul style="list-style-type: none"> <li>• Laboratory staff members are <i>active participants</i> in professional organizations, committees, and activities, and take on leadership responsibilities commensurate with experience and expertise.</li> <li>• Laboratory staff members are <i>active participants</i> in DOE and/or or other supporting agencies-sponsored workshops and strategic planning activities.</li> <li>• Laboratory staff members contribute thoughtful and thorough peer review in a timely manner, when requested by DOE or other supporting agencies.</li> <li>• The Laboratory program consistently provides competitive proposals that challenge convention and open new avenues for research that are well aligned with DOE or other supporting agencies mission needs.</li> <li>• Laboratory staff are <i>active participants</i> in multi-institutional research collaborations</li> </ul>

Letter Grade	Definition
B	<ul style="list-style-type: none"> <li>• Laboratory staff members contribute thoughtful and thorough peer review in a timely manner, when requested by DOE and/or other supporting agencies.</li> <li>• The Laboratory program consistently provides competitive proposals that challenge convention and open new avenues for research that are well aligned with DOE and/or other supporting agencies mission needs.</li> </ul> <p><b>BUT</b> the Laboratory fails to meet the conditions for B+ for <i>at least one</i> of the following reasons:</p> <ul style="list-style-type: none"> <li>• Although <i>regular participants</i> in professional organizations, committees, and activities, <i>the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.</i></li> <li>• Although <i>regular participants</i> in DOE and/or other supported agencies sponsored workshops and strategic planning activities, <i>the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.</i></li> <li>• Although <i>active members of multi-institutional research collaborations</i>, <i>the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.</i></li> </ul>
B-	<ul style="list-style-type: none"> <li>• Laboratory staff members contribute thoughtful and thorough peer review in a timely manner, when requested by DOE or other supporting agencies.</li> </ul> <p><b>BUT</b> the Laboratory fails to meet the conditions for B+ for <i>at least one</i> of the following reasons:</p> <ul style="list-style-type: none"> <li>• The Laboratory program submits competitive proposals <i>but these either lack innovation or are not well aligned with DOE or other supporting agencies mission needs.</i></li> <li>• Laboratory staff are <i>infrequent participants</i> in professional organizations, committees, and activities, and <i>the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.</i></li> <li>• Laboratory staff are <i>infrequent participants</i> in DOE or other supported agencies sponsored workshops and strategic planning activities, and <i>the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.</i></li> <li>• Although <i>active members of multi-institutional research collaborations</i>, <i>the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.</i></li> </ul>
C	<p>The Laboratory fails to meet the conditions for B+ for <i>at least one</i> of the following reasons:</p> <ul style="list-style-type: none"> <li>• Laboratory staff members <i>do not reliably</i> contribute thoughtful and thorough peer review in a timely manner, when requested by DOE or other supporting agencies.</li> <li>• <i>Some areas of research, previously supported, are no longer competitive.</i></li> <li>• Laboratory staff members are <i>infrequent participants</i> in professional organizations, committees, and activities, <b>AND</b> <i>the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.</i></li> <li>• Laboratory staff members are <i>infrequent participants</i> in DOE or other supported agencies sponsored workshops and strategic planning activities, and <i>the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.</i></li> <li>• Although Laboratory staff members are <i>active members of multi-institutional research collaborations</i>, <i>the extent to which staff take on leadership roles falls short of what would be expected, given the level of experience and expertise of the staff.</i></li> </ul>

Letter Grade	Definition
D	The Laboratory fails to meet the conditions for B+ because <i>the Laboratory staff are working on problems that are no longer at the forefront of science and are considered mundane.</i>
F	Review has found the Laboratory staff to be <i>guilty of gross scientific incompetence and/or scientific fraud.</i>

Program Office <sup>1</sup>	Letter Grade	Numerical Score	Weight	Overall Score
<b>Office of High Energy Physics</b>				
1.1 Impact			50%	
1.2 Leadership			50%	
Overall HEP Total				
<b>Workforce Development for Teachers and Scientists (WDTS)</b>				
1.1 Impact			80%	
1.2 Leadership			20%	
Overall WDTS Total				
<b>Accelerator R&amp;D and Production (ARDAP)</b>				
1.1 Impact			50%	
1.2 Leadership			50%	
Overall ARDAP Total				
Overall ARDAP Total				

**Table 1.1 – Program Performance Goal 1.0 Score Development**

Program Office <sup>2</sup>	Letter Grade	Numerical Score	Funding Weight (cost)	Overall Weighted Score
<b>Office of High Energy Physics</b>				
<b>Workforce Development for Teachers and Scientists</b>				
<b>Accelerator R&amp;D and Production</b>				
Performance Goal 1.0 Total				

**Table 1.2 – Overall Performance Goal 1.0 Score Development<sup>2</sup>**

<b>Total Score</b>	4.3-4.1	4.0-3.8	3.7-3.5	3.4-3.1	3.0-2.8	2.7-2.5	2.4-2.1	2.0-1.8	1.7-1.1	1.0-0.8	0.7-0
<b>Final Grade</b>	A+	A	A-	B+	B	B-	C+	C	C-	D	F

**Table 1.3 – Goal 1.0 Final Letter Grade**

<sup>1</sup> A complete listing of the Objectives weightings under the S&T Goals for the SC Programs and other customers is provided within Attachment I to this plan.

<sup>2</sup> The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual cost for FY 2024.

## **GOAL 2.0 Provide for Efficient and Effective Design, Fabrication, Construction and Operations of Research Facilities**

**The Laboratory provides effective and efficient strategic planning; fabrication, construction and/or operations of Laboratory research facilities; and are responsive to the user community.**

The weight of this Goal is TBD%.

The Provide for Efficient and Effective Design, Fabrication, Construction and Operations of Research Facilities Goal shall measure the overall effectiveness and performance of the Contractor in planning for and delivering leading-edge specialty research and/or user facilities to ensure the required capabilities are present to meet today's and tomorrow's complex challenges. It also measures the Contractor's innovative operational and programmatic means for implementation of systems that ensures the availability, reliability, and efficiency of these facilities; and the appropriate balance between R&D and user support.

Each Objective within this Goal is to be assigned the appropriate numerical score by the Office of Science Program Office as identified below. The overall Goal score from each Program Office is computed by multiplying numerical scores earned by the weight of each Objective, and summing them (see Table 2.1). Final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual cost for FY 2024.

- Office of Basic Energy Sciences (BES)
- Office of High Energy Physics (HEP)
- Accelerator R&D and Production (ARDP)

The overall performance score and grade for this Goal will be determined by multiplying the overall score assigned by each of the offices identified above by the weightings identified for each and then summing them (see Table 2.2 below). The overall score earned is then compared to Table 2.3 to determine the overall letter grade for this Goal. Individual Program Office weightings for each of the Objectives identified below are provided within Table 2.1. The Contractor's success in meeting each Objective shall be determined based on the Contractor's performance as viewed by DOE HQ Office of Science's (SC) Program Offices for which the Laboratory conducts work. Should one or more of the HQ Program Offices choose not to provide an evaluation for this Goal and its corresponding Objectives the weighting for the remaining HQ Program Offices shall be recalculated based on their percentage of cost for FY 2023 as compared to the total cost for those remaining HQ Program Offices.

### **Objectives**

#### **2.1 Provide Effective Facility Design(s) as Required to Support Laboratory Programs (i.e., activities leading up to CD-2)**

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The Laboratory's delivery of accurate and timely information required to carry out the critical decision and budget formulation process;
- The Laboratory's ability to meet the intent of DOE Order 413.3, Program and Project Management for the Acquisition of Capital Assets;
- The extent to which the Laboratory appropriately assesses risks and contingency needs; and
- The extent to which the Laboratory is effective in its unique management role and partnership with HQ.

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective. The evaluator(s) may consider the following as measured through progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.

- The quality of the scientific justification for proposed facilities resulting from preconceptual R&D;
- The technical quality of conceptual and preliminary designs and the credibility of the associated cost estimates
- The credibility of plans for the full life cycle of proposed facilities including financing options;
- The leveraging of existing facilities and capabilities of the DOE Laboratory complex in plans for proposed facilities; and
- The novelty and potential impact of new technologies embodied in proposed facilities.

Letter Grade	Definition
A+	In addition to satisfying all conditions for B+; the Laboratory <i>exceeds expectations</i> in <i>all</i> of these categories: <ul style="list-style-type: none"> <li>• The Laboratory is recognized by the research community as the leader for making the science case for the acquisition;</li> <li>• The Laboratory takes the initiative to demonstrate and thoroughly document the potential for transformational scientific advancement.</li> <li>• Approaches proposed by the Laboratory are widely regarded as innovative, novel, comprehensive, and potentially cost-effective.</li> <li>• Reviews repeatedly confirm strong potential for scientific discovery in areas that support the Department’s mission, and potential to change a discipline or research area’s direction.</li> <li>• The Laboratory identifies, analyzes and champions novel approaches for acquiring the new capability, including leveraging or extending the capability of existing facilities and financing and these efforts result in significant cost estimate and/or risk reductions without loss or, or while enhancing capability.</li> </ul>
A	In addition to satisfying all conditions for B+, <i>all</i> of the following conditions are also met: <ul style="list-style-type: none"> <li>• The Laboratory is recognized by the research community as a leader for making the science case for the acquisition;</li> <li>• The Laboratory takes the initiative to demonstrate the potential for revolutionary scientific advancement working in partnership with HQ</li> <li>• The Laboratory identifies, analyzes, and champions, to HQ and Site office, novel approaches for acquiring the new capability, including leveraging or extending the capability of existing facilities and financing.</li> </ul>
A-	In addition to satisfying all conditions for B+, <i>all</i> of the following conditions are also met: <ul style="list-style-type: none"> <li>• The approaches proposed by the Laboratory are widely regarded as innovative, novel, comprehensive, and potentially cost-effective</li> <li>• Reviews repeatedly confirm potential for scientific discovery in areas that support the Department’s mission, and potential to change a discipline or research area’s direction.</li> </ul>
B+	The Laboratory has achieved each of the following objectives: <ul style="list-style-type: none"> <li>• The Laboratory displays leadership and commitment in the development of quality analyses, preliminary designs, and related documentation to support the approval of the mission need (CD-0), the alternative selection and cost range (CD-1) and the performance baseline (CD-2).</li> <li>• Documentation requested by the programs is provided in a timely and thorough manner.</li> <li>• The Laboratory keeps DOE apprised of the status, near-term plans and the resolution of problems on a regular basis; anticipates emerging issues that could impact plans and takes the initiative to inform DOE of possible consequences.</li> <li>• The Laboratory solves problems and addresses issues to avoid adverse impacts to the project.</li> </ul>
B	The Laboratory fails to meet expectations in one of the areas listed under B+.
B-	The Laboratory fails to meet expectations in several of the areas listed under B+



Letter Grade	Definition
C	The Laboratory fails to meet the expectations in several of the areas listed under B+ AND the required analyses and documentation developed by the Laboratory are EITHER not innovative, OR reflect a lack of commitment and leadership.
D	The Laboratory fails to meet the expectations in several of the areas listed under B+ AND the Laboratory fails to provide a compelling justification for the acquisition.
F	The Laboratory fails to meet the expectations in several of the areas listed under B+ AND the approaches proposed by the Laboratory are based on fraudulent assumptions; the science case is weak to non-existent, and the business case is seriously flawed.

## 2.2 Provide for the Effective and Efficient Construction of Facilities and/or Fabrication of Components (execution phase, post CD-2 to CD-4)

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The Laboratory’s adherence to DOE Order 413.3 Project Management for the Acquisition of Capital Assets;
- Successful fabrication of facility components by the Laboratory;
- The Laboratory’s effectiveness in meeting construction schedule and budget;
- The quality of key Laboratory staff overseeing the project(s); and
- The extent to which the Laboratory maintains open, effective, and timely communication with HQ regarding issues and risks.

Letter Grade	Definition
A+	In addition to satisfying all conditions for A, <ul style="list-style-type: none"> <li>• There is high confidence throughout the execution phase that the project will be completed <i>significantly</i> under budget and/or ahead of schedule while meeting or exceeding all performance baselines;</li> </ul>
A	In addition to satisfying all conditions for B+, <ul style="list-style-type: none"> <li>• The Laboratory has identified and implemented practices that would allow the project scope to be <i>significantly expanded</i> if such were desirable, without impact on baseline cost or schedule;</li> <li>• The Laboratory <i>always</i> provides <i>exemplary</i> project status reports on time to DOE and takes the initiative to communicate emerging problems or issues.</li> <li>• Reviews identify environment, safety and health practices to be <i>exemplary</i>.</li> <li>• There is high confidence throughout the execution phase that the project will meet its cost/schedule performance baseline;</li> </ul>
A-	In addition to satisfying all conditions for B+, <ul style="list-style-type: none"> <li>• The Laboratory has identified practices that would allow for the project scope to be expanded if such were desirable, without impact on baseline cost or schedule;</li> <li>• Problems are identified and corrected by the Laboratory promptly, with no impact on scope, cost or schedule</li> <li>• The Laboratory provides <i>particularly useful</i> project status reports on time to DOE and regularly takes the initiative to communicate emerging problems or issues.</li> <li>• Reviews identify environment, safety and health practices to <i>exceed expectations</i>.</li> <li>• There is high confidence throughout the execution phase that the project will meet its cost/schedule performance baseline;</li> </ul>

Letter Grade	Definition
B+	The Laboratory has achieved each of the following objectives <ul style="list-style-type: none"> <li>• The project meets CD-2 performance measures;</li> <li>• The Laboratory provides sustained leadership and commitment to environment, safety and health;</li> <li>• Reviews regularly recognize the Laboratory for being proactive in the management of the execution phase of the project;</li> <li>• To a large extent, problems are identified and corrected by the Laboratory with little, or no impact on scope, cost or schedule;</li> <li>• DOE is kept informed of project status on a regular basis; reviews regularly indicate project is expected to meet its cost/schedule performance baseline.</li> </ul>
B	The Laboratory provides sustained leadership and commitment to environment, safety and health BUT <ul style="list-style-type: none"> <li>• The project fails to meet expectations in <i>one</i> of the remaining areas listed under B+.</li> </ul>
B-	The Laboratory provides sustained leadership and commitment to environment, safety and health BUT <ul style="list-style-type: none"> <li>• The project fails to meet expectations in <i>several</i> of the areas listed under B+</li> </ul>
C	The Laboratory provides sustained leadership and commitment to environment, safety and health BUT The project fails to meet expectations in <i>several</i> of the areas listed under B+ AND <ul style="list-style-type: none"> <li>• Reviews indicate project remains at risk of breaching its cost/schedule performance baseline;</li> <li>• Reports to DOE can vary in degree of completeness</li> </ul>
D	The project fails to meet conditions for B+ in at least one of the following areas: <ul style="list-style-type: none"> <li>• Reviews indicate project is likely to breach its cost/schedule performance baseline;</li> <li>• Laboratory commitment to environment, safety and health issues is inadequate;</li> <li>• Reports to DOE are largely incomplete; Laboratory commitment to the project has subsided.</li> </ul>
F	The project fails to meet conditions for B+ in at least one of the following areas: <ul style="list-style-type: none"> <li>• Laboratory falsifies data during project execution phase;</li> <li>• Shows disdain for executing the project within minimal standards for environment, safety or health,</li> <li>• Fails to keep DOE informed of project status;</li> <li>• Recent reviews indicate that the project is expected to breach its cost/schedule performance baseline.</li> </ul>

### 2.3 Provide Efficient and Effective Operation of Facilities

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The availability, reliability, performance, and efficiency of Laboratory facility(ies);
- The degree to which the facility is optimally arranged to support the user community;
- The extent to which Laboratory R&D is conducted to develop/expand the capabilities of the facility(ies);
- The Laboratory’s effectiveness in balancing resources between facility R&D and user support; and
- The quality of the process used to allocate facility time to users.

Letter Grade	Definition
A+	<p>In addition to satisfying all conditions for B+; <i>all</i> of the following conditions are also met</p> <ul style="list-style-type: none"> <li>• Performance of the facility <i>exceeds</i> expectations as defined before the start of the year in all of these categories: cost of operations, users served, availability, and capability;</li> <li>• The schedule and the costs associated with the ramp-up to steady state operations are <i>significantly less</i> than planned and are acknowledged to be ‘leadership caliber’ by reviews;</li> <li>• Data on environment, safety, and health continues to be exemplary and widely regarded as among the ‘best in class’</li> <li>• The Laboratory took extraordinary means to deliver an extraordinary result for the users and the program in the performance/ review period.</li> </ul>
A	<p>In addition to satisfying all conditions for B+; <i>all</i> of the following conditions are also met</p> <ul style="list-style-type: none"> <li>• Performance of the facility <i>exceeds</i> expectations as defined before the start of the year in most of these categories: cost of operations, users served, availability, and capability;</li> <li>• The schedule and the costs associated with the ramp-up to steady state operations are <i>less</i> than planned and are acknowledged to be ‘leadership caliber’ by reviews;</li> <li>• Data on environment, safety, and health continues to be <i>exemplary</i> and widely regarded as among the ‘best in class.’</li> </ul>
A-	<p>In addition to satisfying all conditions for B+, <i>one</i> of the following conditions is met:</p> <ul style="list-style-type: none"> <li>• Performance of the facility <i>exceeds</i> expectations as defined before the start of the year in any of these categories: cost of operations, users served, availability, and capability;</li> <li>• The schedule and the costs associated with the ramp-up to steady state operations are <i>less</i> than planned and are acknowledged to be among the best by reviews;</li> </ul>
B+	<p>The Laboratory has achieved each of the following objectives:</p> <ul style="list-style-type: none"> <li>• Performance of the facility <i>meets</i> expectations as defined before the start of the year in all of these categories: cost of operations, users served, availability, capability (for example, beam delivery, luminosity, peak performance, etc),</li> <li>• The schedule and the costs associated with the ramp-up to steady state operations occur as planned;</li> <li>• Data on environment, safety, and health continues to be very good as compared with other projects in the DOE.</li> <li>• User surveys meet program expectations and reflect that the Laboratory is responsive to user needs.</li> </ul>
B	The project fails to meet expectations in <i>one</i> of the areas listed under B+.
B-	The project fails to meet expectations in <i>more than one</i> of the areas listed under B+.
C	<p>Performance of the facility fails to meet expectations in <i>many</i> of the areas listed under B+; for example,</p> <ul style="list-style-type: none"> <li>• The cost of operations is unexpectedly high and availability of the facility is unexpectedly low, the number of users is unexpectedly low, capability is well below expectations.</li> <li>• The facility operates at steady state, on cost and on schedule, but the reliability of performance is somewhat below planned values, <b>or</b> the facility operates at steady state, but the associated schedule and costs exceed planned values.</li> <li>• Commitment to environment, safety, and health is <i>satisfactory</i>.</li> </ul>
D	<p>Performance of the facility fails to meet expectations in <i>many</i> of the areas listed under B+; for example,</p> <ul style="list-style-type: none"> <li>• The cost of operations is unexpectedly high and availability of the facility is unexpectedly low; capability is well below expectations.</li> <li>• The facility operates somewhat below steady state, on cost and on schedule, and the reliability of performance is somewhat below planned values, <b>or</b> the facility operates at steady state, but the associated schedule and costs exceed planned values.</li> <li>• Commitment to environment, safety, and health is <i>inadequate</i>.</li> </ul>
F	<ul style="list-style-type: none"> <li>• The facility fails to operate; the facility operates well below steady state <b>and/or</b> the reliability of the performance is well below planned values.</li> <li>• Laboratory commitment to environment, safety, and health issues is <i>inadequate</i>.</li> </ul>

## 2.4 Utilization of Facility(ies) to Provide Impactful S&T Results and Benefits to External User Communities

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The extent to which the facility is being used to perform influential science;
- The Laboratory’s efforts to take full advantage of the facility to generate impactful S&T results;
- The extent to which the facility is strengthened by a resident Laboratory research community that pushes the envelope of what the facility can do and/or are among the scientific leaders of the community;
- The Laboratory’s ability to appropriately balance access by internal and external user communities; and
- The extent to which there is a healthy program of outreach to the scientific community.

Letter Grade	Definition
A+	In addition to meeting all measures under A, <ul style="list-style-type: none"> <li>• The Laboratory took extraordinary means to deliver an extraordinary result for a new user community.</li> </ul>
A	In addition to satisfying all conditions for B+; <i>all</i> of the following conditions are met <ul style="list-style-type: none"> <li>• An <i>aggressive</i> outreach programs is in place and has been documented as attracting new communities to the facility;</li> <li>• Reviews consistently find that the facility capability or scope of research potential <i>significantly</i> exceeds expectations for example, due to newly discovered capabilities or exposure to new research communities; OR Reviews find that multiple disciplines are using the facility in new and novel ways that the facility is being used to pursue influential science.</li> </ul>
A-	In addition to satisfying all conditions for B+, all of the following conditions are met <ul style="list-style-type: none"> <li>• A <i>strong</i> outreach program is in place;</li> <li>• Reviews find that the facility capability or scope of research potential exceeds expectations for example, due to newly discovered capabilities or exposure to new research communities; OR Reviews document how multiple disciplines are using the facility in new and novel ways and/or that the facility is being used to pursue important science.</li> </ul>
B+	The Laboratory has achieved each of the following objectives: <ul style="list-style-type: none"> <li>• Reviews find / validate that the facility is being used for influential science;</li> <li>• The scope of facility capabilities is challenged and broadened by resident users;</li> <li>• The Laboratory effectively manages user allocations;</li> <li>• The Laboratory effectively maintains the facility to required performance standards (for example, runtime, luminosity, etc.)</li> <li>• A healthy outreach program is in place.</li> </ul>
B	The Laboratory fails to meet expectations in <i>one</i> of the areas listed under B+
B-	The Laboratory fails to meet expectations in <i>several</i> of the areas listed under B+
C	The Laboratory fails to meet expectations in <i>many</i> of the areas listed under B+
D	Reviews find that there are few facility users, few of whom are using the facility in novel ways to produce impactful science; research base is very thin.
F	Laboratory staff does not possess capabilities to operate and/or use the facility adequately.

**Notable Outcomes**

- **BES/SCIENTIFIC USER FACILITY(SUF):** Effectively manage and safely execute the assigned LCLS-II-HE project scope in accordance with DOE Order 413.3B. Performance will be assessed based on the assigned project management responsibilities and cryomodule work planned and accomplished during FY 2024. (Objective 2.1)
- **HEP:** To support future planning by the lab and by HEP, evaluate the implications of new capabilities and modifications proposed to P5 to include running at the 2.4 MW beam power level. The study should identify site, facility, and controlled area impacts (radiological, un-useable and limited occupancy space, increased tritium generation, etc.) based on the current configuration and what is expected to be practical through defined improvements. (Objective 2.3)

Program Office <sup>3</sup>	Letter Grade	Numerical Score	Weight	Overall Score
<b>Office of Basic Energy Sciences</b>				
2.1 Provide Effective Facility Design(s)			100%	
2.2 Provide for the Effective and Efficient Construction of Facilities and/or Fabrication of Components			0%	
2.3 Provide Efficient and Effective Operation of Facilities			0%	
2.4 Utilization of Facility(ies) to Provide Impactful S&T Results and Benefits to External User Communities			0%	
			Overall BES Total	
<b>Office of High Energy Physics</b>				
2.1 Provide Effective Facility Design(s)			10%	
2.2 Provide for the Effective and Efficient Construction of Facilities and/or Fabrication of Components			80%	
2.3 Provide Efficient and Effective Operation of Facilities			10%	
2.4 Utilization of Facility(ies) to Provide Impactful S&T Results and Benefits to External User Communities			0%	
			Overall HEP Total	
<b>Accelerator R&amp;D and Production</b>				
2.1 Provide Effective Facility Design(s)			0%	
2.2 Provide for the Effective and Efficient Construction of Facilities and/or Fabrication of Components			0%	
2.3 Provide Efficient and Effective Operation of Facilities			0%	
2.4 Utilization of Facility(ies) to Provide Impactful S&T Results and Benefits to External User Communities			100%	
			Overall ARDAP Total	

**Table 2.1 – Program Performance Goal 2.0 Score Development**

3 A complete listing of the Objectives weightings under the S&T Goals for the SC Programs and other customers is provided within Attachment I to this plan.

Program Office	Letter Grade	Numerical Score	Funding Weight (cost)	Overall Weighted Score
Office of Basic Energy Sciences				
Office of High Energy Physics				
Accelerator R&D and Production				
<b>Performance Goal 2.0 Total</b>				

**Table 2.2 – Overall Performance Goal 2.0 Score Development<sup>4</sup>**

Total Score	4.3-4.1	4.0-3.8	3.7-3.5	3.4-3.1	3.0-2.8	2.7-2.5	2.4-2.1	2.0-1.8	1.7-1.1	1.0-0.8	0.7-0
Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F

**Table 2.3 – Goal 2.0 Final Letter Grade**

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4 The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual cost for FY 2024.

### **GOAL 3.0 Provide Effective and Efficient Science and Technology Program Management**

**The Laboratory provides effective program vision and leadership; strategic planning and development of initiatives; recruits and retains a quality scientific workforce; and provides outstanding research processes, which improve research productivity.**

The weight of this Goal is 25%.

The Provide Effective and Efficient Science and Technology Program Management Goal shall measure the Contractor's overall management in executing S&T programs. Dimensions of program management covered include: 1) providing key competencies to support research programs to include key staffing requirements; 2) providing quality research plans that take into account technical risks, identify actions to mitigate risks; and 3) maintaining effective communications with customers to include providing quality responses to customer needs.

Each Objective within this Goal is to be assigned the appropriate numerical score by the Office of Science, other cognizant HQ Program Offices, and other customers as identified below. The overall Goal score from each HQ Program Office and/or customer is computed by multiplying numerical scores earned by the weight of each Objective, and summing them (see Table 3.1). The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual cost for FY 2023 provided by the Program Offices listed below.

- Office of High Energy Physics (HEP)
- Workforce Development for Teachers and Scientists (WDTS)
- Accelerator R&D and Production (ARDAP)

The overall performance score and grade for this Goal will be determined by multiplying the overall score assigned by each of the offices identified above by the weightings identified for each and then summing them (see Table 3.2 below). The overall score earned is then compared to Table 3.3 to determine the overall letter grade for this Goal. The Contractor's success in meeting each Objective shall be determined based on the Contractor's performance as viewed by the Office of Science, other cognizant HQ Program Offices, and other customers for which the Laboratory conducts work. Should one or more of the HQ Program Offices choose not to provide an evaluation for this Goal and its corresponding Objectives the weighting for the remaining HQ Program Offices shall be recalculated based on their percentage of cost for FY 2023, as compared to the total cost for those remaining HQ Program Offices.

#### **Objectives**

##### **3.1 Provide Effective and Efficient Strategic Planning and Stewardship of Scientific Capabilities and Program Vision**

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The quality of the Laboratory's strategic plan;
- The extent to which the Laboratory shows strategic vision for research
- The extent to which programs of research take advantage of Laboratory capabilities—research programs are more than the sum of their individual project parts;
- The extent to which the Laboratory undertakes research for which it is uniquely qualified;
- The extent to which lab plans are aligned with DOE or other supporting agency mission goals;

- The extent to which the Laboratory programs are balanced between high-/low- risk research for a sustainable program; and
- The extent to which the Laboratory is able to retain and recruit staff for a sustainable program

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective. The evaluator(s) may consider the following as measured through progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.

- Articulation of scientific vision;
- Development and maintenance of core competencies;
- Ability to attract and retain highly qualified staff;
- Efficiency and effectiveness of joint planning (e.g., workshops) with outside community;
- Creativity and robustness of ideas for new facilities and research programs; and
- Willingness to take on high-risk/high payoff/long-term research problems, evidence that the Laboratory “guessed right” in that previous risky decisions proved to be correct and are paying off.
- The depth and breadth of Laboratory research portfolio and its potential for growth.

Letter Grade	Definition
A+	In addition to satisfying the conditions for B+, the execution of the Laboratory’s strategic plan has enabled the Laboratory to achieve each of the following: <ul style="list-style-type: none"> <li>• <i>Most</i> of the Laboratory’s core competencies are recognized as world leading;</li> <li>• The Laboratory has attracted and retained world-leading scientists in <i>most</i> programs;</li> <li>• There is evidence that previous decisions to pursue high-risk/high-payoff research proved to be correct and are paying off;</li> <li>• The Laboratory has succeeded in developing new core competencies of <i>outstanding</i> quality in areas both exploratory, high-risk research and research that is vital to the DOE/SC or other supporting department or agency missions;</li> </ul>
A	In addition to satisfying the conditions for B+, the execution of the Laboratory’s strategic plan has enabled the Laboratory to achieve the following: <ul style="list-style-type: none"> <li>• <i>Several</i> of the Laboratory’s core competencies are recognized as world leading;</li> <li>• The Laboratory has attracted and retained world-leading scientists in <i>several</i> programs;</li> <li>• There is evidence that previous decisions to pursue high-risk/high-payoff research proved to be correct and are paying off</li> <li>• The Laboratory has succeeded in developing <i>new</i> core competencies of <i>high</i> quality in areas both exploratory, high-risk research and research that is vital to the DOE/SC/other supporting departments or agency missions.</li> </ul>
A-	In addition to satisfying the conditions for B+, the execution of the Laboratory’s strategic plan has enabled the Laboratory to achieve at least one of the following: <ul style="list-style-type: none"> <li>• At least one of the Laboratory’s core competencies is recognized as <i>world-leading</i>;</li> <li>• The Laboratory has attracted and retained <i>world-leading</i> scientists in one or more programs;</li> <li>• The Laboratory has a coherent plan for addressing future workforce challenges.</li> </ul>



Letter Grade	Definition
B+	<p>The execution of the Laboratory’s strategic plan has enabled the Laboratory to achieve each of the following objectives:</p> <ul style="list-style-type: none"> <li>• The Laboratory has articulated a coherent and compelling strategic plan that has been developed with input from external research communities and headquarters guidance, which, where appropriate, includes a coherent plan for building smaller research programs into new core competencies; and reallocates resources away from less effective programs.</li> <li>• The Laboratory has demonstrated the ability to attract and retain professional scientific staff in support of its strategic vision.</li> <li>• The portfolio of Laboratory research balances the needs for both high-risk/ high-payoff research and stewardship of mission-critical research.</li> <li>• The Laboratory’s research portfolio takes advantage of unique capabilities at the Laboratory.</li> <li>• The Laboratory’s research portfolio includes activities for which the Laboratory is uniquely capable.</li> </ul>
B	<p>The Laboratory fails to satisfy one of the conditions for B+; for example</p> <ul style="list-style-type: none"> <li>• The Laboratory’s strategic plan is only <i>partially</i> coherent and is not entirely well-connected with external communities;</li> <li>• The portfolio of Laboratory research does <i>not</i> appropriately balance high-risk/ high-payoff research and stewardship of mission-critical research;</li> <li>• The Laboratory has developed and maintained <i>some, but not all</i>, of its core competencies.</li> <li>• The plan to attract and retain professional scientific staff is <i>lacking</i> strategic vision.</li> </ul>
B-	<p>The Laboratory fails to satisfy <i>several</i> of the conditions for B+, including at least one of the following:</p> <ul style="list-style-type: none"> <li>• Weak programmatic vision insufficiently connected with external communities;</li> <li>• Development and maintenance of only a few core competencies</li> <li>• Little attention to maintaining the correct balance between high-risk and mission-critical research;</li> <li>• Inability to attract and retain talented scientists in some programs.</li> </ul>
C	<p>The Laboratory fails to satisfy <i>several</i> of the conditions for B+, including at least one of the following reasons:</p> <ul style="list-style-type: none"> <li>• The Laboratory’s strategic plan lacks strategic vision and lacks appropriate coordination with appropriate stakeholders including external research groups.</li> <li>• The Laboratory’s strategic plan does not provide for sufficient maintenance of core competencies</li> <li>• Plan to attract and retain professional scientific staff is unlikely to be successful or does not focus on strategic capabilities.</li> </ul>
D	<p>The Laboratory fails to satisfy <i>several</i> of the conditions for B+, and specifically</p> <ul style="list-style-type: none"> <li>• The Laboratory has demonstrated little effort in developing a strategic plan.</li> <li>• The Laboratory has done little to develop and maintain core competencies</li> <li>• The Laboratory has had minimal success in attracting and retaining professional scientific staff.</li> </ul>
F	<p>The Laboratory has:</p> <ul style="list-style-type: none"> <li>• Made limited or ineffective attempts to develop a strategic plan;</li> <li>• Not demonstrated the ability to develop and maintain core competencies, has failed to propose high-risk/high-reward research and has failed to steward mission-critical areas;</li> <li>• Failed to attract even reasonably competent scientists and technical staff.</li> </ul>

### 3.2 Provide Effective and Efficient Science and Technology Project/Program/Facilities Management

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The Laboratory’s management of R&D programs and facilities according to proposed plans;
- The extent to which the Laboratory’s management of projects/programs/facilities supports the Laboratory strategic plan

- Adequacy of the Laboratory’s consideration of technical risks;
- The extent to which the Laboratory is successful in identifying/avoiding technical problems;
- Effectiveness in leveraging across multiple areas of research and between research and facility capabilities;
- The extent to which the Laboratory demonstrates a willingness to make tough decisions (i.e., cut programs with sub-critical mass of expertise, divert resources to more promising areas, etc.); and
- The use of LDRD and other Laboratory investments and overhead funds to improve the competitiveness of the Laboratory.

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective. The evaluator(s) may consider the following as measured through progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.

- Laboratory plans that are reviewed by experts outside of lab management and/or include broadly-based input from within the Laboratory.

Letter Grade	Definition
A+	In addition to meeting the all expectations under A, <ul style="list-style-type: none"> <li>• The Laboratory has taken extraordinary measures to deliver an extraordinary result of critical importance to DOE or other relevant supporting agency missions, which could include the delivery of a critical technology or insight in response to a National emergency</li> </ul>
A	In addition to satisfying the conditions for B+, <ul style="list-style-type: none"> <li>• The Laboratory’s implementation of project/program/facility plans has led directly to effective R&amp;D programs/facility operations that exceed program expectations in <i>several</i> programmatic areas. Examples are listed under A-.</li> </ul>
A-	In addition to satisfying the conditions for B+, <ul style="list-style-type: none"> <li>• The Laboratory’s implementation of project/program/facility plans has led directly to effective R&amp;D programs/facility operations that exceed program expectations in <i>more than one</i> programmatic area. Examples of performance that exceeds expectations include:</li> <li>• The Laboratory’s implementation of project/program/facility plans has led directly to significant cost savings and/or significantly higher productivity than expected;</li> <li>• Project/program/facility plans prove to be robust against changing scientific and fiscal conditions through contingency planning;</li> <li>• The Laboratory has demonstrated creativity and forceful leadership in development and/or proactive management of its project/program/facility plans to reduce or eliminate risk;</li> <li>• The Laboratory’s proposals for new initiatives are funded through reallocation of resources from less effective programs.</li> <li>• Research plans and management actions are proactive, not reactive, as evidenced by making hard decisions and taking strong actions; and</li> <li>• Management is prepared for budget fluctuations and changes in DOE or other supporting agency program priorities – multiple contingencies are planned for; and</li> <li>• LDRD investments, overhead funds, and other Laboratory funds are used to strengthen lab plans and fill critical gaps in the Laboratory portfolio enabling it to respond to future DOE or other relevant supporting agency initiatives and/or national emergencies.</li> </ul>

Letter Grade	Definition
B+	The Laboratory has achieved each of the following objectives: <ul style="list-style-type: none"> <li>• Project/program/facility plans exist for all major projects/programs/facilities.</li> <li>• Project/program/facility plans are consistent with known budgets, are based on reasonable assessments of technical risk, are well-aligned with DOE or other relevant supporting agency interests, provide sufficient flexibility to respond to unforeseen directives and opportunities, and effectively leverage other Laboratory resources and expertise.</li> <li>• The Laboratory has implemented the project/program/facility plans and has effective methods of tracking progress.</li> <li>• The Laboratory demonstrates willingness to make tough decisions (i.e., cut programs with sub-critical mass of expertise, divert resources to more promising areas, etc.).</li> <li>• The Laboratory’s implementation of project/program/facility plans has led directly to effective R&amp;D programs/facility operations.</li> <li>• LDRD investments and other overhead funds are managed appropriately.</li> </ul>
B	<ul style="list-style-type: none"> <li>• Project/program/facility plans exist for all major projects/programs/facilities.</li> <li>• The Laboratory has implemented the project/program/facility plans.</li> </ul> BUT the Laboratory fails to meet <i>at least one of</i> the conditions for B+.
B-	<ul style="list-style-type: none"> <li>• Project/program/facility plans exist for all major projects/programs/facilities.</li> <li>• The Laboratory has implemented the project/program/facility plans.</li> </ul> BUT the Laboratory fails to meet <i>several of</i> the conditions for B+.
C	<ul style="list-style-type: none"> <li>• Project/program/facility plans exist for most major projects/programs/facilities.</li> </ul> BUT the Laboratory has failed to implement the project/program/facility plans AND the Laboratory fails to meet <i>several of</i> the conditions for B+.
D	<ul style="list-style-type: none"> <li>• Project/program/facility plans do not exist for a significant fraction of the Laboratory’s major projects/programs/facilities;</li> </ul> OR <ul style="list-style-type: none"> <li>• Significant work at the Laboratory is not in alignment with the project/program/facility plans</li> </ul>
F	The Laboratory has failed to conduct project/program/facility planning activities.

### 3.3 Provide Efficient and Effective Communications and Responsiveness to Headquarters Needs

In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- The quality, accuracy and timeliness of the Laboratory’s response to customer requests for information;
- The extent to which the Laboratory provides point-of-contact resources and maintains effective internal communications hierarchies to facilitate efficient determination of the appropriate point-of-contact for a given issue or program element;
- The effectiveness of the Laboratory’s communications and depth of responsiveness under extraordinary or critical circumstances; and
- The effectiveness of Laboratory management in accentuating the importance of communication and responsiveness.

Letter Grade	Definition
A+	In addition to meeting the all expectations under A, <ul style="list-style-type: none"> <li>• The Laboratory’s effective communication and extraordinary responsiveness in the face of extreme situations or a national emergency had a materially positive impact on the outcome of the event and/or DOE or other relevant supporting agency’s mission objectives</li> </ul>

Letter Grade	Definition
A	In addition to satisfying the conditions for B+, the Laboratory also meets all of the following: <ul style="list-style-type: none"> <li>• Laboratory management has instilled a culture throughout the lab that emphasizes good communication practices;</li> <li>• Communication channels are well-defined and information is effectively conveyed;</li> <li>• Responses to HQ requests for information from all Laboratory representatives are prompt, thorough, correct and succinct; important or critical information is delivered in real-time;</li> <li>• Laboratory representatives <i>always</i> initiate a communication with HQ on emerging Laboratory issues; headquarters is never surprised to learn of emerging Laboratory issues through outside channels.</li> </ul>
A-	In addition to satisfying the conditions for B+, <ul style="list-style-type: none"> <li>• Laboratory management has instilled a culture throughout the lab that emphasizes good communication practices;</li> <li>• Responses to requests for information are prompt, thorough, and economical/succinct at all levels of interaction;</li> <li>• Laboratory representatives <i>often</i> initiate communication with HQ on emerging Laboratory issues; and</li> <li>• under critical circumstances, essential information is delivered in real-time</li> </ul>
B+	The Laboratory has achieved each of the following objectives: <ul style="list-style-type: none"> <li>• Staff throughout the Laboratory organization engage in good communication practices;</li> <li>• Responses to requests for information are prompt and thorough;</li> <li>• The accuracy and integrity of the information provided is never in doubt;</li> <li>• Up-to-date point-of-contact information is widely available for all programmatic areas; and</li> <li>• Headquarters is always and promptly informed of both positive and negative events at the Laboratory</li> </ul>
B	The Laboratory failed to meet the conditions for B+ <i>in a few instances</i>
B-	The Laboratory fails to meet the conditions for B+ for <i>one</i> of the following reasons: <ul style="list-style-type: none"> <li>• Responses to requests for information do not provide the minimum requirements to meet HQ needs; While the integrity of the information provided is never in doubt, its accuracy sometimes is;</li> <li>• Laboratory representatives do not take the initiative to alert HQ to emerging Laboratory issues.</li> </ul>
C	The Laboratory fails to meet the conditions for B+ for <i>one or more</i> of the following reasons: <ul style="list-style-type: none"> <li>• Responses to requests for information frequently fail to provide the minimum requirements to meet HQ needs</li> <li>• The Laboratory used outside channels or circumvented HQ in conveying critical information;</li> <li>• The integrity and/or accuracy of information provided is sometimes in doubt;</li> <li>• Laboratory management fails to demonstrate that its employees are held accountable for ensuring effective communication and responsiveness;</li> <li>• Laboratory representatives failed to alert HQ to emerging Laboratory issues.</li> </ul>
D	The Laboratory fails to meet the conditions for B+ for one of the following reasons: <ul style="list-style-type: none"> <li>• Laboratory staff are generally well-intentioned in communication but consistently ineffective and/or incompetent;</li> <li>• The Laboratory management fails to emphasize the importance of effective communication and responsiveness</li> </ul>
F	The Laboratory fails to meet the conditions for B+ for one of the following reasons <ul style="list-style-type: none"> <li>• Laboratory staff are openly hostile and/or non-responsive to requests for information – emails and phone calls are consistently ignored;</li> <li>• Responses to requests for information are consistently incorrect, inaccurate or fraudulent – information is not organized, is incomplete, or is fabricated.</li> </ul>

**Notable Outcomes**

- **HEP:** Submit a strategic response to the 2023 P5 Report for the lab by August 31, 2024. Identify which new initiatives recommended by P5 that lab wishes to participate in and document the strengths the lab brings to those. Also identify existing efforts that will continue or strengthen. Identify efforts that will be reduced to enable this. (Objective 3.1)

Program Office <sup>5</sup>	Letter Grade	Numerical Score	Weight	Overall Score
<b>Office of High Energy Physics</b>				
3.1 Effective and Efficient Strategic Planning and Stewardship			30%	
3.2 Project/Program /Facilities Management			50%	
3.3 Communications and Responsiveness			20%	
Overall HEP Total				
<b>Office of Workforce Development for Teachers and Scientists</b>				
3.1 Effective and Efficient Strategic Planning and Stewardship			20%	
3.2 Project/Program /Facilities Management			50%	
3.3 Communications and Responsiveness			30%	
Overall WDTS Total				
<b>Accelerator R&amp;D and Production</b>				
3.1 Effective and Efficient Strategic Planning and Stewardship			40%	
3.2 Project/Program /Facilities Management			40%	
3.3 Communications and Responsiveness			20%	
Overall ARDAP Total				

**Table 3.1 – Program Performance Goal 3.0 Score Development**

HQ Program Office	Letter Grade	Numerical Score	Funding Weight (cost)	Overall Weighted Score
<b>Office of High Energy Physics</b>				
<b>Office of Workforce Development for Teachers and Scientists</b>				
Accelerator R&D and Production				
<b>Performance Goal 3.0 Total</b>				

**Table 3.2 – Overall Performance Goal 3.0 Score Development<sup>6</sup>**

Total Score	4.3-4.1	4.0-3.8	3.7-3.5	3.4-3.1	3.0-2.8	2.7-2.5	2.4-2.1	2.0-1.8	1.7-1.1	1.0-0.8	0.7-0
Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F

**Table 3.3 – Goal 3.0 Final Letter Grade**

<sup>5</sup> A complete listing of the Objectives weightings under the S&T Goals for the SC Programs and other customers is provided within Attachment I to this plan.

<sup>6</sup> The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual cost for FY 2024.

**Attachment I**

Program Office Goal & Objective Weightings  
 Office of Science

	<b>BES</b>	<b>HEP</b>	<b>WDTS</b>	<b>ARDAP</b>
	<b>Weight</b>	<b>Weight</b>	<b>Weight</b>	<b>Weight</b>
<b>Goal 1.0 Mission Accomplishment</b>	<b>N/A</b>	<b>TBD</b>	<b>TBD</b>	<b>TBD</b>
1.1 Impact	0%	50%	80%	50%
1.2 Leadership	0%	50%	20%	50%
<b>Goal 2.0 Design, Fabrication, Construction and Operation of Facilities</b>	<b>TBD</b>	<b>TBD</b>	<b>N/A</b>	<b>N/A</b>
2.1 Design of Facility (the initiation phase and the definition phase, i.e. activities leading up to CD-2)	100%	10%	N/A	0%
2.2 Construction of Facility / Fabrication of Components (execution phase, Post CD-2 to CD-4)	0%	80%	N/A	0%
2.3 Operation of Facility	0%	10%	N/A	0%
2.4 Utilization of Facility to Grow and Support Lab's Research Base and External User Community	0%	0%	N/A	100%
<b>Goal 3.0 Program Management</b>	<b>N/A</b>	<b>TBD</b>	<b>TBD</b>	<b>TBD</b>
3.1 Effective and Efficient Strategic Planning and Stewardship	N/A	30%	20%	40%
3.2 Project/Program/Facilities Management	N/A	50%	50%	40%
3.3 Communications and Responsiveness	N/A	20%	30%	20%

**GOAL 4.0 Provide Sound and Competent Leadership and Stewardship of the Laboratory**

**This Goal evaluates the Contractor’s Leadership capabilities in leading the direction of the overall Laboratory, the responsiveness of the Contractor to issues and opportunities for continuous improvement, and corporate office involvement/commitment to the overall success of the Laboratory.**

In measuring the performance of the above Objectives, the DOE evaluator(s) shall consider performance trends and outcomes in overall Contractor Leadership’s planning for, integration of, responsiveness to and support for the overall success of the Laboratory. This may include, but is not limited to, the quality of Laboratory Vision/Mission strategic planning documentation and progress in realizing the Laboratory vision/mission; the ability to establish and maintain long-term partnerships/relationships with the scientific and local communities as well as private industry that advance, expand, and benefit the ongoing Laboratory mission(s) and/or provide new opportunities/capabilities; implementation of a robust assurance system; Laboratory leadership facilitate and effectively manage external engagements and partnerships; Laboratory and Corporate Office Leadership’s ability to instill responsibility and accountability down and through the entire organization; overall effectiveness of communications with DOE; understanding, management and allocation of the costs of doing business at the Laboratory commensurate with associated risks and benefits; utilization of corporate resources to establish joint appointments or other programs/projects/activities to strengthen the Laboratory; and advancing excellence in stakeholder relations to include good corporate citizenship within the local community.

**Objectives:**

**4.1 Leadership and Stewardship of the Laboratory**

**By which we mean:** The performance of the laboratory’s senior management team as demonstrated by their ability to do such things as:

- Define an exciting yet realistic scientific vision for the future of the laboratory,
- Make progress in realizing the vision for the laboratory,
- Establish and maintain long-term partnerships/relationships that maintain appropriate relations with the scientific and local communities, and
- Develop and leverage appropriate relations with private industry to the benefit of the laboratory and the U.S. taxpayer.

Letter Grade	Definition
A+	The Senior Leadership of the laboratory has made outstanding progress (on an order of magnitude scale) over the previous year in realizing their vision for the laboratory, and has had a demonstrable impact on the Department and the Nation. Strategic plans are of outstanding quality, have been externally recognized and referenced for their excellence, and have an impact on the vision/plans of other national laboratories. The Senior leadership of the laboratory may have been faced very difficult challenges and plotted, successfully, its own course through the difficulty, with minimal hand-holding by the Department. Partners in the scientific and local communities applaud the laboratory in national fora, and the Department is strengthened by this.
A	The Senior Leadership of the laboratory has made significant progress over the previous year in realizing their vision for the laboratory, and has through this has had a demonstrable positive impact on the Office of Science and the Department. Strategic plans are of outstanding quality, and recognize and reflect the vision/plans of other national laboratories. Faced with difficult challenges, actions were taken by the Senior leadership of the laboratory to redirect laboratory activities to enhance the long-term future of the laboratory. Partners in the scientific and local communities applaud the laboratory in national fora, and the Department is strengthened by this.
A-	The laboratory senior management performs better than expected (B+ grade) in these areas.

Letter Grade	Definition
B+	The Senior Leadership of the laboratory has made significant progress over the previous year in realizing their vision for the laboratory. Strategic plans present long range goals that are both exciting and realistic. Decisions and actions taken by the lab leadership align work, facilities, equipment and technical capabilities with the laboratory vision and plan. The Senior leadership of the laboratory faced difficult challenges and successfully plotted its own course through the difficulty, with help from the Department. Partners in the scientific and local communities are supportive of the laboratory.
B	The Senior Leadership of the laboratory has made little progress over the previous year in realizing their vision for the laboratory. Strategic plans present long range goals that are exciting and realistic; however DOE is not fully confident that the laboratory is taking the actions necessary for the goals to be achieved. The Laboratory is not fully engaged with its partners/relationships in the scientific and local communities to maximize the potential benefits these relations have for the laboratory.
C	The Senior Leadership of the laboratory has made no progress over the previous year in realizing their vision for the laboratory or aligning work, facilities, equipment and technical capabilities with the laboratory vision and plan. Strategic plans present long range goals that are either unexciting or unrealistic. Business plans exist, but they are not linked to the strategic plan and do not inspire DOE’s confidence that the strategic goals will be achieved. Partnerships with the scientific and local communities with potential to advance the laboratory exist, but they may not always be consistent with the mission of or vision for the laboratory. Affected communities and stakeholders are mostly supportive of the laboratory and aligned with the management’s vision for the laboratory.
D	The Senior Leadership of the laboratory has made no progress or has back-slid over the previous year in realizing their vision for the laboratory or in aligning work, facilities, equipment and technical capabilities with the laboratory vision and plan. Strategic plans present long range goals that are neither exciting nor realistic. Partnerships that may advance the Laboratory towards strategic goals are inappropriate, unidentified, or unlikely. Affected communities and stakeholders are not adequately engaged with the laboratory and indicate non-alignment with DOE priorities.
F	The Senior Leadership of the laboratory has made no progress or has back-slid over the previous year in realizing their vision for the laboratory or in or aligning work, facilities, equipment and technical capabilities with the laboratory vision and plan. Strategic plans present long range goals that are not aligned with DOE priorities or the mission of the laboratory. Partnerships that may advance the Laboratory towards strategic goals are inappropriate, unidentified, and unlikely, and/or the senior management team does not demonstrate a concerted effort to develop, leverage, and maintain relations with the scientific and local communities to assist the laboratory in achieving a successful future. Affected communities and stakeholders are openly non-supportive of the laboratory and DOE priorities.

#### 4.2 Management and Operation of the Laboratory

**By which we mean:** The performance of the laboratory’s senior management team as demonstrated by their ability to do such things as:

- Implement a robust contractor assurance system,
- Understand the costs of doing business at the laboratory and prioritize the management and allocation of these costs commensurate with their associated risks and benefits,
- Instill a culture of accountability and responsibility down and through the entire organization;
- Ensure good and timely communication between the laboratory and SC headquarters and the Site Office so that DOE can deal effectively with both internal and external constituencies.



Letter Grade	Definition
A+	<p>The laboratory has a nationally or internationally recognized contractor assurance system in place that integrates internal and external (corporate) evaluation processes to evaluate risk, and is working to help others internal and external to the Department establish similarly outstanding practices. The laboratory understands the drivers of cost at their lab, and are prioritizing and managing these costs commensurate with the associated risks and benefits to the laboratory and the SC laboratory system.</p> <p>Laboratory management and processes reflect a sense of accountability and responsibility with is evident down and through the entire organization. Communication between the laboratory and SC headquarters and the Site Office is such that all the national laboratories and the Department as a whole benefits.</p>
A	<p>The laboratory has improved dramatically in the last year in all of the following: building a robust and transparent contractor assurance system that integrates internal and external (corporate) evaluation processes to evaluate risk; demonstrating the use of this system in making decisions that are aligned with the laboratory’s vision and strategic plan; understanding the drivers of cost at their lab, and prioritizing and managing these costs consistent with their associated risks and benefits to the laboratory and the SC laboratory system; demonstrating laboratory management and processes reflect a sense of accountability and responsibility with is evident down and through the entire organization; assuring communication between the laboratory and SC headquarters that is beneficial to both the lab and SC.</p>
A-	<p>The laboratory senior management performs better than expected (B+ grade) in these areas.</p>
B+	<p>The laboratory has a robust and transparent contractor assurance system in place that integrates internal and external (corporate) evaluation processes to evaluate risk. The laboratory can demonstrate use of this system in making decisions that are aligned with the laboratory’s vision and strategic plan. The laboratory understands the drivers of cost at their lab, and are prioritizing and managing these costs commensurate with the associated risks and benefits to the laboratory and the SC laboratory system.</p> <p>Laboratory management and processes reflect a sense of accountability and responsibility with is evident down and through the entire organization. Communication between the laboratory and SC headquarters and the Site Office is such that there are no surprises or embarrassments.</p>
B	<p>The laboratory has a contractor assurance system in place but further improvements are necessary, or the link between the CAS and the laboratory’s decision-making processes are not evident. The laboratory understands the drivers of cost at their lab, but they are not prioritizing and managing these costs as well as they should to be commensurate with the associated risks and benefits to the laboratory and the SC laboratory system. Laboratory management and processes reflect a sense of accountability and responsibility with is mostly evident down and through the entire organization. Communication between the laboratory and SC headquarters and the Site Office is such that there are no significant surprises or embarrassments.</p>
C	<p>The laboratory lacks a robust and transparent contractor assurance system in place that integrates internal and external (corporate) evaluation processes to evaluate risk. The laboratory cannot demonstrate use of this system in making decisions that are aligned with the laboratory’s vision and strategic plan. The laboratory does not fully understand the drivers of cost at their lab, and thus are not prioritizing and managing these costs as well as they should to be commensurate with the associated risks and benefits to the laboratory and the SC laboratory system. Communication between the laboratory and SC headquarters and the Site Office is such that there has been at least one significant surprise or embarrassment.</p>
D	<p>The laboratory lacks a contractor assurance system, doesn’t understand the drivers of cost at their lab, and is not prioritizing and managing costs. SC HQ must intercede in management decisions. Poor communication between the laboratory and SC headquarters and the Site Office has resulted in more than one significant surprise or embarrassment.</p>
F	<p>Lack of management by the laboratory’s senior management has put the future of the laboratory at risk, or has significantly hurt the reputation of the Office of Science.</p>

### 4.3 Leadership of External Engagements and Partnerships

**By which we mean:** The performance of the laboratory leadership team to achieve the following:

- Establish a vision for developing and promoting technology transfer activities at the laboratory that align with the laboratory research portfolio, further DOE missions, and promote national and economic security of the United States;
- Identify potential partners, implement outreach activities, and manage external engagements to promote accomplishment of technology transfer objectives, and to develop a feedback loop with industry that both informs planned and ongoing technology transfer activities; and,
- Foster a culture of entrepreneurship at the laboratory that encourages staff at all levels to consider potential technology transfer opportunities within their program work and other laboratory activities.

Letter Grade	Definition
A+	<p>Laboratory leadership has an exemplary vision for shepherding technology transfer and commercialization, education and workforce development, and community-based activities at the laboratory that aligns with the laboratory’s unique expertise, facilities, and technology portfolio with the intent of advancing the DOE mission, national security, and economic prosperity for the United States.</p> <p>The laboratory is recognized across the DOE complex for its preeminent leadership and excellence in:</p> <ul style="list-style-type: none"> <li>• identifying, engaging, and leveraging relationships with industry, other labs, academia, local, state, and federal government, community groups, and tribes to drive technology transfer and commercialization, education and workforce development, and community-based activities that benefit the laboratory, DOE, the local and regional population, and the U.S. taxpayer;</li> <li>• facilitating regional partnerships and initiatives that contribute to the local economy, workforce development, and community-based activities;</li> <li>• fostering a culture of entrepreneurship and community engagement at the laboratory that encourages staff at all levels to consider and implement initiatives that enhance technology transfer and commercialization, education and workforce development, and community-based programs;</li> <li>• developing and submitting, as the prime applicant, applications for funding to public and private sector institutions and receiving funding from such institutions for technology transfer and commercialization-related projects;</li> <li>• encouraging multi-lab collaborations and joint technology development partnerships by participating in the development and submission of funding applications;</li> <li>• leveraging funding from public and private sector entities, including philanthropic institutions, to advance and achieve DOE technology transfer and commercialization goals;</li> <li>• supporting regional innovation ecosystems through technical services, education and mentorship programs, and partnerships that support start-up incubation and technology acceleration of DOE-funded technologies and external technologies that support the DOE mission;</li> <li>• partnering with the public and private sectors to develop, contribute to, and review technology transfer and commercialization strategies based on robust market analyses to support the transfer and commercialization of technologies across the research, development, demonstration, and deployment (RDD&amp;D) continuum; and,</li> <li>• contributing as members and serving in leadership positions in the Technology Transfer Working Group (TTWG), the National Laboratory Technology Transfer (NLTT) council, and other working and coordination groups established by DOE Headquarters.</li> </ul>

	<p>The laboratory is recognized across the complex for being highly effective in developing national and regional public and private partnerships that significantly enhance DOE and laboratory outreach efforts and scientific missions. The laboratory staff are strongly encouraged to seek out and pursue potential technology transfer and commercialization, education and workforce development, and community-based activities that are clearly connected and/or complementary to their research and opportunities are available for staff to pursue such activities. The laboratory can demonstrate how this outreach informs its ongoing technology transfer and commercialization, education and workforce development, and community-based efforts, and they are at the forefront of technology transfer and commercialization, education and workforce development, and community-based outcomes.</p>
A	<p>Laboratory leadership has a substantive vision for shepherding technology transfer and commercialization, education and workforce development, and community-based activities at the laboratory that aligns with the laboratory’s unique expertise, facilities, and technology portfolio with the intent of advancing the DOE mission, national security, and economic prosperity for the United States.</p> <p>The laboratory demonstrates leadership and excellence in:</p> <ul style="list-style-type: none"> <li>• identifying, engaging, and leveraging relationships with industry, other labs, academia, local, state, and federal government, community groups, and tribes to drive technology transfer and commercialization, education and workforce development, and community-based activities that benefit the laboratory, DOE, the local and regional population, and the U.S. taxpayer;</li> <li>• facilitating regional partnerships and initiatives that contribute to the local economy, workforce development, and community-based activities;</li> <li>• fostering a culture of entrepreneurship and community engagement at the laboratory that encourages staff at all levels to consider and put into effect initiatives that enhance technology transfer and commercialization, education and workforce development, and community-based activities;</li> <li>• developing and submitting, as the prime applicant, applications for funding to public and private sector institutions and receiving funding from such institutions for technology transfer and commercialization, education and workforce development, and community-based related projects; and,</li> <li>• encouraging multi-lab collaborations and joint technology development partnerships by participating in the development and submission of funding applications and receiving funding from public and private sector entities, including philanthropic institutions, to advance and achieve DOE technology transfer and commercialization goals; and,</li> <li>• prioritizing technology transfer by leveraging non-federal funds to support technology transfer and commercialization activities.</li> </ul> <p>The laboratory is highly effective in developing national and regional public and private partnerships that significantly enhance DOE and laboratory outreach efforts and scientific missions. The laboratory staff are encouraged to seek out and pursue potential technology transfer and commercialization, education and workforce development, and community-based activities that are clearly connected and/or complementary to their research and opportunities are available for staff to pursue such activities. The laboratory can demonstrate how this outreach informs its ongoing technology transfer and commercialization, education and workforce development, and community-based activities, and they are at the forefront of commercialization, education and workforce development, and community-based outcomes.</p>
A-	<p>The laboratory senior management performs better than expected (B+ grade) in these areas.</p>
B+	<p>Laboratory leadership has a vision for shepherding technology transfer and commercialization, education and workforce development, and community-based activities at the laboratory that aligns with the laboratory’s unique expertise, facilities, and technology portfolio with the intent of advancing the DOE mission, national security, and economic prosperity for the United States.</p> <p>The laboratory demonstrates effectiveness in:</p>

	<ul style="list-style-type: none"> <li>• identifying, engaging, and leveraging relationships with industry, other labs, academia, local, state, and federal government, community groups, and tribes to drive technology transfer and commercialization, education and workforce development, and community-based activities that benefit the laboratory, DOE, the local and regional population, and the U.S. taxpayer;</li> <li>• facilitating regional partnerships and initiatives that contribute to the local economy, workforce development, and community-based activities; and,</li> <li>• fostering a culture of entrepreneurship and community engagement at the laboratory that encourages staff at all levels to consider potential initiatives that enhance technology transfer and commercialization, education and workforce development, and community-based programs;</li> <li>• encourage the development and submittal, as the prime applicant, applications for funding to public and private sector institutions for technology transfer and commercialization, education and workforce development, and community-based related projects; and,</li> <li>• encouraging multi-lab collaborations and joint technology development partnerships by participating in the development and submission of funding applications to advance and achieve DOE technology transfer and commercialization goals.</li> </ul> <p>The laboratory is effective in developing national and regional public and private partnerships that enhance DOE and laboratory outreach efforts and scientific missions. The laboratory staff are encouraged to seek out and pursue potential technology transfer and commercialization, education and workforce development, and community-based activities that are clearly connected and/or complementary to their research and opportunities are available for staff to pursue such activities. The laboratory can demonstrate how this outreach informs its ongoing technology transfer and commercialization, education and workforce development, and community-based activities, and they have strong evidence of progress in commercialization, education and workforce development, and community-based outcomes.</p>	
B	<p>Laboratory leadership performs below (B+ grade) in these areas. Laboratory leadership supports development of a vision for technology transfer and commercialization, education and workforce development, and community-based activities at the laboratory; however, this vision is not fully realized and requires more work in more than one of the areas described above including, but not limited to, identifying, engaging, and leveraging relationships with potential external partners, facilitating regional partnerships and initiatives that contribute to the local economy, workforce development, and community-based activities, and/or overcoming challenges in capturing intellectual property. The laboratory staff are allowed but not encouraged to seek out and pursue potential technology transfer and commercialization, education and workforce development, and community-based activities. The laboratory has developed few partnerships that will advance DOE and laboratory outreach and technology transfer and commercialization, education and workforce development, and community-based activities, and they have average technology transfer and commercialization, education and workforce development, and community-based outcomes.</p>	
	<p>The laboratory lacks a vision and the mechanisms to implement a strategy to promote technology transfer and commercialization, education and workforce development, and community-based activities at the laboratory and has little success in developing partnerships and there has been limited commercialization, education and workforce development, and community-based outcomes. This is evidenced in part by a lack of participation in funding opportunities and partnership activities that support technology transfer activities.</p>	has
C	<p>The laboratory lacks a vision and the mechanisms to implement a strategy to promote technology transfer and commercialization, education and workforce development, and community-based activities at the laboratory and has little success in developing partnerships and there has been limited commercialization, education and workforce development, and community-based outcomes. This is evidenced in part by a lack of participation in funding opportunities and partnership activities that support technology transfer activities.</p>	
D	<p>Laboratory leadership lacks a vision and has not supported the mechanisms/resources necessary to develop or implement an external engagement strategy to promote technology transfer and commercialization, education and workforce development, and community-based activities at the laboratory including partnership efforts. Laboratory staff are discouraged from seeking out opportunities to solicit external partner input and are also discouraged from identifying potential activities for technology transfer and commercialization, education and workforce development, and community-based and from engaging in efforts to protect intellectual property.</p>	

F	Lack of vision and resources by the laboratory's senior management has hindered the ability of the laboratory to identify, plan, and engage external partners to develop and promote technology transfer and commercialization, education and workforce development, and community-based activities at the laboratory that align with the laboratory's unique expertise, facilities, and technology portfolio; this failure has significantly hurt the Department's ability to achieve its mission.
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#### 4.4 Contractor Value-added

**By which we mean:** the additional benefits that accrue to the laboratory and the Department of Energy by virtue of having this particular M&O contractor in place. Included here, typically, are things over which the laboratory leadership does not have immediate authority, such as:

- Corporate involvement/contributions to deal with challenges at the laboratory;
- Using corporate resources to establish joint appointments or other programs/projects/activities that strengthen the lab, and
- Providing other contributions to the laboratory that enable the lab to do things that are good for the laboratory and its community and that DOE cannot supply.

Letter Grade	Definition
A+	The laboratory has been transformed as a result of the many, substantial, additional benefits that accrue to the laboratory as a result of this contractor’s support and operation of the laboratory.
A	Over the past year, the laboratory has become demonstrably stronger, better and more attractive as a place of employment as a result of the many, substantial, additional benefits that accrue to the laboratory as a result of this contractor’s support and operation of the laboratory.
A-	The laboratory senior management performs better than expected (B+ grade) in these areas.
B+	The laboratory enjoys additional benefits above and beyond those associated with managing the laboratory’s activities that accrue as a result of this contractor’s support and operation of the laboratory.
B	The laboratory enjoys few additional benefits that accrue as a result of this contractor’s operation of the laboratory; help by the contractor is needed to strengthen the laboratory.
C	The laboratory enjoys few additional benefits that accrue as a result of this contractor’s operation of the laboratory; the contractor seems unable to help the laboratory.
D	The laboratory enjoys few additional benefits that accrue as a result of this contractor’s operation of the laboratory; the contractor’s efforts are inconsistent with the interests of the laboratory and the Department.
F	The laboratory enjoys no additional benefits that accrue as a result of this contractor’s operation of the laboratory; the contractor’s efforts are counter-productive to the interests of the Department.

#### Notable Outcomes

- **FSO:** Assess remote and hybrid work policies and ensure laboratory practices are consistently implemented with approved policies. Utilizing the hybrid schedules of onsite occupancy, ensure efficient and effective management and utilization of space and facilities including a policy for office allocation, hoteling, and hybrid workplace. (Objective 4.2)

ELEMENT	Letter Grade	Numerical Score	Objective Weight	Overall Score
<b>Goal 4.0 – Provide Sound and Competent Leadership and Stewardship of the Laboratory</b>				
4.1 Leadership and Stewardship of the Laboratory			30%	
4.2 Management and Operation of the Laboratory			25%	
4.3 Advancing Laboratory Diversity, Equity, Inclusion and Accessibility			10%	
4.4 Leadership of External Engagements and Partnerships			10%	
4.4 Contractor Value-Added			25%	
<b>Performance Goal 4.0 Total</b>				

**Table 4.1 – Performance Goal 4.0 Score Development**

<b>Total Score</b>	<b>4.3-4.1</b>	<b>4.0-3.8</b>	<b>3.7-3.5</b>	<b>3.4-3.1</b>	<b>3.0-2.8</b>	<b>2.7-2.5</b>	<b>2.4-2.1</b>	<b>2.0-1.8</b>	<b>1.7-1.1</b>	<b>1.0-0.8</b>	<b>0.7-0</b>
Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F

**GOAL 5.0 Sustain Excellence and Enhance Effectiveness of Integrated Safety, Health, and Environmental Protection**

The weight of this Goal is 30%.

**This Goal evaluates the Contractor's overall success in deploying, implementing, and improving integrated ES&H systems that efficiently and effectively support the mission(s) of the Laboratory.**

- 5.1 Provide an Efficient and Effective Worker Health and Safety Program
- 5.2 Provide Efficient and Effective Environmental Management System

In measuring the performance of the above Objectives, the DOE evaluator(s) shall consider performance trends and outcomes in protecting workers, the public, and the environment. This may include, but is not limited to, minimizing the occurrence of environment, safety and health (ESH) incidents; effectiveness of the Integrated Safety Management (ISM) system; effectiveness of work planning, feedback, and improvement processes; the strength of the safety culture throughout the Laboratory; the strength of the Nuclear/Facility Safety Programs; the effective development, implementation and maintenance of an efficient and effective Environmental Management system; and the effectiveness of responses to identified hazards and/or incidents.

**Goal 5.0 Notable Outcomes:**

- **FSO:** Review and revise training to assure non-employees working on-site can identify and respond to hazards and requirements. (Objective 5.1)
- **FSO:** Identify specific Radioactive Material Areas in each building and ensure that material custodians are assigned for the radioactive materials in each area. Using 10 CFR 835 and 851 (and other applicable regulations/codes), assess and revise the use, storage, labeling, and posting of radioactive materials and other hazardous substances in the RMAs, and initiate inventory reductions where appropriate. (Objective 5.1)



<b>ELEMENT</b>	<b>Letter Grade</b>	<b>Numerical Score</b>	<b>Objective Weight</b>	<b>Overall Score</b>
<b>Goal 5.0 - Sustain Excellence and Enhance Effectiveness of Integrated Safety, Health, and Environmental Protection.</b>				
5.1 Provide an Efficient and Effective Worker Health and Safety Program			60%	
5.2 Provide an Efficient and Effective Environmental Management System			40%	
<b>Performance Goal 5.0 Total</b>				

**Table 5.1 – Performance Goal 5.0 Score Development**

<b>Total Score</b>	<b>4.3-4.1</b>	<b>4.0-3.8</b>	<b>3.7-3.5</b>	<b>3.4-3.1</b>	<b>3.0-2.8</b>	<b>2.7-2.5</b>	<b>2.4-2.1</b>	<b>2.0-1.8</b>	<b>1.7-1.1</b>	<b>1.0-0.8</b>	<b>0.7-0</b>
Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F

**Table 5.2 – Goal 5.0 Final Letter Grade**

**GOAL 6.0 Deliver Efficient, Effective, and Responsive Business Systems and Resources that Enable the Successful Achievement of the Laboratory Mission(s)**

The weight of this Goal is 30%.

**This Goal evaluates the Contractor's overall success in deploying, implementing, and improving integrated business systems that efficiently and effectively support the mission(s) of the Laboratory.**

- 6.1 Provide an Efficient, Effective, and Responsive Financial Management System
- 6.2 Provide an Efficient, Effective, and Responsive Acquisition Management System and Property Management System
- 6.3 Provide an Efficient, Effective, and Responsive Human Resources and Talent Management Systems
- 6.4 Provide Efficient, Effective, and Responsive Contractor Assurance Systems, including Internal Audit and Quality
- 6.5 Demonstrate Effective Transfer of Knowledge and Technology and the Commercialization of Intellectual Assets

In measuring the performance of the above Objectives, the DOE evaluator(s) shall consider performance trends and outcomes in the development, deployment and integration of foundational program (e.g., Contractor Assurance, Quality, Financial Management, Acquisition Management, Property Management, and Human Resource Management) systems across the Laboratory. This may include, but is not limited to, minimizing the occurrence of management systems support issues; quality of work products; continual improvement driven by the results of audits, reviews, recognized, evidence-based practices, and other performance information; the integration of system performance metrics and trends; the degree of knowledge and appropriate utilization of established system processes, procedures, and data by Contractor management and staff; benchmarking and performance trending analysis. The DOE evaluator(s) shall consider the Laboratory's performance in making progress toward comprehensive collection and submission to OSTI of peer-reviewed accepted manuscripts for journal articles (and associated metadata) resulting from DOE-funded research as called for in the [DOE Public Access Plan<sup>2</sup>](#), and cooperation with the Department in meeting the relevant requirements to provide other forms of scientific and technical information to OSTI, per DOE O 241.1B. The DOE evaluator(s) shall also consider the stewardship of the pipeline of innovations and resulting intellectual assets at the Laboratory along with impacts and returns created/generated as a result of technology transfer, work for others and intellectual asset deployment activities.

**Notable Outcomes**

- **FSO:** Complete CAP implementation inclusive of development of a procurement staff Training Plan that is targeted to develop knowledge and skills by June 28, 2024. (Objective 6.2)

<sup>2</sup> <https://www.energy.gov/downloads/doe-public-access-plan>

<b>ELEMENT</b>	<b>Letter Grade</b>	<b>Numerical Score</b>	<b>Objective Weight</b>	<b>Overall Score</b>
<b>Goal 6.0 - Deliver Efficient, Effective, and Responsive Business Systems and Resources that Enable the Successful Achievement of the Laboratory Mission(s)</b>				
6.1 Provide an Efficient, Effective, and Responsive Financial Management System(s)			20%	
6.2 Provide an Efficient, Effective, and Responsive Acquisition Management System and Property Management System			30%	
6.3 Provide an Efficient, Effective, and Responsive Human Resources Management System and Diversity Program			20%	
6.4 Provide Efficient, Effective, and Responsive Contractor Assurance Systems, including Internal Audit and Quality			15%	
6.5 Demonstrate Effective Transfer of Knowledge and Technology and the Commercialization of Intellectual Assets			15%	
<b>Performance Goal 6.0 Total</b>				

**Table 6.1 – Performance Goal 6.0 Score Development**

<b>Total Score</b>	<b>4.3-4.1</b>	<b>4.0-3.8</b>	<b>3.7-3.5</b>	<b>3.4-3.1</b>	<b>3.0-2.8</b>	<b>2.7-2.5</b>	<b>2.4-2.1</b>	<b>2.0-1.8</b>	<b>1.7-1.1</b>	<b>1.0-0.8</b>	<b>0.7-0</b>
Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F

**Table 6.2 – Goal 6.0 Final Letter Grade**

**GOAL 7.0 Sustain Excellence in Operating, Maintaining, and Renewing the Facility and Infrastructure Portfolio to Meet Laboratory Needs**

The weight of this Goal is 25 %.

**This Goal evaluates the overall effectiveness and performance of the Contractor in planning for, delivering, and operations of Laboratory facilities and equipment needed to ensure required capabilities are present to meet today’s and tomorrow’s mission(s) and complex challenges.**

- 7.1 Manage Facilities and Infrastructure in an Efficient and Effective Manner that Optimizes Usage, Minimizes Life Cycle Costs, and Ensures Site Capability to Meet Mission Needs
- 7.2 Provide Planning for and Acquire the Facilities and Infrastructure Required to Support the Continuation and Growth of Laboratory Missions and Programs

In measuring the performance of the above Objectives, the DOE evaluator(s) shall consider performance trends and outcomes in facility and infrastructure programs. This may include, but is not limited to, the management of real property assets to maintain effective operational safety, worker health, environmental protection and compliance, property preservation, and cost effectiveness; planning and executing strategies to promote the resilience and reliability of laboratory infrastructure; effective facility utilization, maintenance and budget execution; day-to-day management and utilization of space in the active portfolio; maintenance and renewal of building systems, structures and components associated with the Laboratory’s facility and land assets; management of energy use, conservation, and sustainability practices; the integration and alignment of the Laboratory’s comprehensive strategic plan with capabilities; facility planning, forecasting, and acquisition; the delivery of accurate and timely information required to carry out the critical decision and budget formulation process; quality of site and facility planning documents; and Cost and Schedule Performance Index performance for facility and infrastructure projects.

**Notable Outcomes**

- **FSO:** Develop a village master plan by June 2024 to include elements of demolition, revitalization, infrastructure renewal, and new development concept, including plans for a new Fermilab housing facility. The village master plan should lay out a strategy to relocate all scientific operations in the village. Deliver the conceptual design of the new proposed Fermilab housing facility by March 2024 meeting both DOE and lab leadership objectives in support of State of Illinois timelines/submission requirements. (Objective 7.2)

ELEMENT	Letter Grade	Numerical Score	Objective Weight	Overall Score
<b>Goal 7.0 - Sustain Excellence in Operating, Maintaining, and Renewing the Facility and Infrastructure Portfolio to Meet Laboratory Needs.</b>				
7.1 Manage Facilities and Infrastructure in an Efficient and Effective Manner that Optimizes Usage, Minimizes Life Cycle Costs, and Ensures Site Capability to Meet Mission Needs			40%	
7.2 Provide Planning for and Acquire the Facilities and Infrastructure Required to support the Continuation and Growth of Laboratory Missions and Programs			60%	
<b>Performance Goal 7.0 Total</b>				

**Table 7.1 – Performance Goal 7.0 Score Development**

<b>Total Score</b>	<b>4.3-4.1</b>	<b>4.0-3.8</b>	<b>3.7-3.5</b>	<b>3.4-3.1</b>	<b>3.0-2.8</b>	<b>2.7-2.5</b>	<b>2.4-2.1</b>	<b>2.0-1.8</b>	<b>1.7-1.1</b>	<b>1.0-0.8</b>	<b>0.7-0</b>
Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F

**Table 7.2 – Goal 7.0 Final Letter Grade**

**GOAL 8.0 Sustain and Enhance the Effectiveness of Integrated Safeguards and Security Management (ISSM) and Emergency Management Systems**

The weight of this Goal is 15%.

**This Goal evaluates the Contractor’s overall success in safeguarding and securing Laboratory assets that supports the mission(s) of the Laboratory in an efficient and effective manner and provides an effective emergency management program.**

- 8.1 Provide an Efficient and Effective Emergency Management System
- 8.2 Provide an Efficient and Effective Cyber Security System for the Protection of Classified and Unclassified Information
- 8.3 Provide an Efficient and Effective Physical Security Program for the Protection of Special Nuclear Materials, Classified Matter, Classified Information, Sensitive Information, and Property

In measuring the performance of the above Objectives, the DOE evaluator(s) shall consider performance trends and outcomes in the safeguards and security, cyber security and emergency management program systems. This may include, but is not limited to, the commitment of leadership to strong safeguards and security, cyber security and emergency management systems; the integration of these systems into the culture of the Laboratory; the degree of knowledge and appropriate utilization of established system processes/procedures by Contractor management and staff; maintenance and the appropriate utilization of Safeguards, Security, and Cyber risk identification, prevention, and control processes/activities; and the prevention and management controls and prompt reporting and mitigation of events as necessary.

**Notable Outcomes**

- **FSO:** Assure positive facility control and accountability by completing an agreed to plan of targeted re-keying while expanding and validating appropriate proximity card access aligned with need. (Objective 8.3)

ELEMENT	Letter Grade	Numerical Score	Objective Weight	Overall Score
<b>Goal 8.0 - Sustain and Enhance the Effectiveness of Integrated Safeguards and Security management (ISSM) and Emergency Management Systems.</b>				
8.1 Provide an Efficient and Effective Emergency Management System			20%	
8.2 Provide an Efficient and Effective Cyber Security System for the Protection of Classified and Unclassified Information			40%	
8.3 Provide an Efficient and Effective Physical Security Program for the Protection of Special Nuclear Materials, Classified Matter, Classified Information, Sensitive Information, and Property			40%	
<b>Performance Goal 8.0 Total</b>				

**Table 8.1 – Performance Goal 8.0 Score Development**

<b>Total Score</b>	<b>4.3-4.1</b>	<b>4.0-3.8</b>	<b>3.7-3.5</b>	<b>3.4-3.1</b>	<b>3.0-2.8</b>	<b>2.7-2.5</b>	<b>2.4-2.1</b>	<b>2.0-1.8</b>	<b>1.7-1.1</b>	<b>1.0-0.8</b>	<b>0.7-0</b>
Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F

**Table 8.2 – Goal 8.0 Final Letter Grade**

**APPENDIX C**

**SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT**

(Sample agreement, see Section H Clause entitled “Special Financial Institution Account Agreement”).)

**Applicable to the Operations of  
Fermi National Accelerator Laboratory**



**SPECIAL FINANCIAL INSTITUTION ACCOUNT  
AGREEMENT FOR USE WITH THE PAYMENTS CLEARED  
FINANCING ARRANGEMENT**

Agreement entered into this, \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as “DOE”), and \_\_\_\_\_, a corporation/legal entity existing under the laws of the State of \_\_\_\_\_ (hereinafter referred to as the Contractor) and \_\_\_\_\_, a financial institution corporation existing under the laws of the State of \_\_\_\_\_, located at \_\_\_\_\_ (hereinafter referred to as the Financial Institution).

**RECITALS**

- (a) On the effective date of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, DOE and the Contractor entered into Agreement(s) No. \_\_\_\_\_, or a Supplemental Agreement(s) thereto, providing for the transfer of funds on a payments-cleared basis.
- (b) DOE requires that amounts transferred to the Contractor there under be deposited in a special demand deposit account at a financial institution covered by Treasury-approved Government deposit insurance organizations that are identified in I TFM 6-9000.

These special demand deposits must be kept separate from the Contractor’s general or other funds, and the parties are agreeable to so depositing said amounts with the Financial Institution.

- (c) The special demand deposit account shall be designated [name of Contractor] [account title] account.

**COVENANTS**

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that–

1. The Government shall have a title to the credit balance in said account to secure the repayment of all funds transferred to the Contractor, and said title shall be superior to any lien, title, or claim of the Financial Institution or others with respect to such accounts.
2. The Financial Institution shall be bound by the provisions of said Agreement(s) between DOE and the Contractor relating to the transfer of funds into and withdrawal of funds from the above special demand deposit account, which are hereby incorporated into this Agreement by reference, but the Financial Institution shall not be responsible for the application of funds withdrawn from said account. After receipt by the Financial Institution of directions from DOE, the Financial Institution shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Financial Institution from the Government upon DOE stationery and purporting to be signed by, or signed at the written direction of, the Government may, insofar as the rights, duties, and liabilities of the Financial Institution are concerned, be considered as having been properly issued and filed with the Financial Institution by DOE.

3. DOE, or its authorized representatives, shall have access to financial records maintained by the Financial Institution with respect to such special demand deposit account at all reasonable times and for all reasonable purposes, including, but without limitation to, the inspection or copying of such financial records and any or all memoranda, checks, payment requests, correspondence, or documents pertaining thereto. Such financial records shall be preserved by the Financial Institution for a period of 6 years after the final payment under the Agreement.
4. In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the special demand deposit account, the Financial Institution shall promptly notify DOE at:

[Name of office]  
[Street address]  
[City]  
[State and Zip Code]

5. DOE authorizes funds to the extent obligations have been incurred in good faith there under by the Contractor to the Financial Institution for the benefit of the special demand deposit account. The Financial Institution agrees to honor upon presentation for payment all payments issued by the Contractor and to restrict all withdrawals against the funds authorized to an amount sufficient to maintain the average daily balance in the special demand deposit account in a net positive and as close to zero as administratively possible.

The Financial Institution agrees to service the account in this manner based on the requirements and specifications contained in DOE solicitation No. \_\_\_\_\_, dated \_\_\_\_\_. The Financial Institution agrees that per-item costs, detailed in the form “Schedule of Financial Institution Processing Charges,” contained in the Financial Institution’s aforesaid bid will remain constant during the term of this Agreement. The Financial Institution shall calculate the monthly fees based on services rendered and invoice the contractor. The contractor shall issue a check or automated clearinghouse authorization transfer to the Financial Institution in payment thereof.

6. The Financial Institution shall post collateral in accordance with 31 CFR 202 with the Federal Reserve bank in an amount equal to the net balances in all of the accounts included in this Agreement (including the noninterest-bearing time deposit account), less the Treasury-approved deposit insurance.
7. This Agreement, with all its provisions and covenants, shall be in effect for a term of \_\_\_\_\_ years, beginning on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and ending on the day of \_\_\_\_\_, \_\_\_\_\_.
8. DOE, the Contractor, or the Financial Institution may terminate this Agreement at any time within the agreement period upon submitting written notification to the other parties 90 days prior to the desired termination date. The specific provisions for operating the account during this 90-day period are contained in Covenant 11.
9. DOE or the Contractor may terminate this Agreement at any time upon 30 days’ written notice to the Financial Institution if DOE or the Contractor, or both parties, find that the Financial Institution has failed to substantially perform its obligations under this Agreement or that the Financial Institution is performing its obligation in a manner that precludes administering the program in an effective and efficient manner of that precludes the effective utilization of the Government’s cash resources.

10. Notwithstanding the provisions of Covenants 8 and 9, in the event that the Agreement, referenced in Recital (a), between DOE and the Contractor is not renewed or is terminated, this Agreement between DOE, the Contractor, and the Financial Institution shall be terminated automatically upon the delivery of written notice to the Financial Institution.
11. In the event of termination, the Financial Institution agrees to retain the Contractor's special demand deposit account for an additional 90-day period to clear outstanding payment items.

This Agreement shall continue in effect for the 90-day additional period, with exception of the following:

1. Term Agreement (Covenant 7)
2. Termination of Agreement (Covenant 8 and 9)

All terms and conditions of the aforesaid bid submitted by the Financial Institution that are not inconsistent with this 90-day additional term shall remain in effect for this period.

The Financial Institution has submitted the forms entitled "Technical Representations and Certifications" and "Schedule of Financial Institution Processing Charges." These forms have been accepted by the Contractor and the Government and are incorporated herein with the document entitled "Financial Institution's Information on Payments Cleared Financing Arrangement" as an integral part of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement, which consists of \_\_\_\_\_ pages, including the signature pages, to be executed as of the day and year first above written.

\_\_\_\_\_  
Date Signed

By \_\_\_\_\_  
(Typed Name of Contractor Officer)

\_\_\_\_\_  
(Signature of Contracting Officer)

WITNESS

\_\_\_\_\_  
(Typed Name of Witness)

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Signature of Witness)

By \_\_\_\_\_  
(Name of Contractor's Representative)

Note: In the case of a corporation,  
a witness is not required. Type or  
print names under all signatures.

\_\_\_\_\_  
(Signature of Contractor's Representative)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Date Signed)

\_\_\_\_\_  
(Name of Witness)

\_\_\_\_\_  
(Name of Financial Institution)

\_\_\_\_\_  
(Name of Financial Institution Representative)

\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Signature of Financial Institution Representative)

Note: In the case of a corporation,  
a witness is not required. Type  
or print names under all signatures.

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Date Signed)

NOTE

The contractor, if a corporation, shall cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and the Certificate.

CERTIFICATE

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the corporation named as Contractor herein; that \_\_\_\_\_, who signed this Agreement on behalf of the Contractor, was then \_\_\_\_\_ of said corporation and that said Agreement was duly signed for the and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

\_\_\_\_\_  
(Corporate Seal) (Signature)

NOTE

Financial Institution, if a corporation, shall cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and the Certificate.

CERTIFICATE

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the corporation named as Contractor herein; that \_\_\_\_\_, who signed this Agreement on behalf of the Contractor, was then \_\_\_\_\_ of said corporation and that said Agreement was duly signed for the and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

\_\_\_\_\_  
(Corporate Seal) (Signature)

## **APPENDIX D**

### **CONTRACTOR'S COMMITMENTS**

(To be proposed by the Contractor and accepted in whole or in part by DOE at time of award.)

**Applicable to the Operations of  
Fermi National Accelerator Laboratory**

## **APPENDIX E**

### **KEY PERSONNEL**

(To be completed by the Contractor upon submission of the proposal.)

**Applicable to the Operations of  
Fermi National Accelerator Laboratory**

Pursuant to the Section I Clause entitled “DEAR 952.215-70 – Key Personnel”, the following positions are considered to be essential to work being performed.

**Key Personnel**

**Title**

**Name**

Laboratory Director\*

Chief Operating Officer\*

Chief Research Officer\*

**Other Key Personnel to be proposed by Offeror:**

**Title**

**Name**

\*denotes required Key Personnel



**APPENDIX F**

**RESERVED**

**Applicable to the Operations of  
Fermi National Accelerator Laboratory**

## **APPENDIX G**

### **PURCHASING SYSTEM REQUIREMENTS**

**Applicable to the Operations of  
Fermi National Accelerator Laboratory**

## Purchasing System Requirements

This Appendix and Section I Clause entitled “DEAR 970.5244-1 – Contractor Purchasing System” sets forth DOE requirements applicable to the Purchasing System established under the contract for the management of Fermi National Accelerator Laboratory (FNAL).

### Subcontracts Not Binding on DOE

As used herein, the term “subcontracts” includes subcontracts, purchase orders, letter agreements, basic ordering agreements, consultant agreements, micro-purchases, EDI, FACNET and other electronic contracting transactions, and lower tier subcontracts under cost-type subcontracts (in an unbroken cost-type chain) that represent costs properly chargeable to the Prime Contract.

All applicable subcontracts made in the name of the Contractor shall not bind or purport to bind the Government, shall not relieve the Contractor of any obligation under the Prime Contract (including, among other things, the obligation to properly supervise and coordinate the work of subcontractors), and shall contain such provisions as are required by this contract or as DOE may prescribe based on Federal statutes and regulations, or DOE Orders and Policies.

### DOE Approval

Prior DOE written approval is required for the following actions:

1. Laboratory solicitation/award of any subcontract having a value of \$5,000,000.00 or greater, or any subcontract modification which will cause the value to exceed \$5,000,000.00;
2. Except as otherwise expressly provided or directed, in writing, by DOE Patent Counsel with notification to the Contracting Officer, actions which involve any one of, or combination of, the following intellectual property matters:
  - a. Acquisition of software by negotiated lease or license;
  - b. Purchase of patents or patent license rights, including the payment of royalties and permits, or license fees;
  - c. Recognition of proprietary rights, including the recognition of technical data as trade secrets; or,
  - d. Any restriction of DOE’s use of data procured under a subcontract.
3. Inter-Contractor Purchases (ICP’s) expected to exceed \$1,000,000.00.

4. The purchase of utilities defined as: steam, gas, electricity, telephone lines, water and sewage.
5. All new, additions to, modifications or deletions of Laboratory Procurement Policies and Procedures shall be submitted to DOE for approval prior to implementation.

The above approval requirements do not eliminate any other requirement for review, concurrence, or approval of other proposed actions specified in the subject contract or DOE's right to require consent on any single or class of purchasing actions selected for special surveillance.

## **APPENDIX H**

### **SMALL BUSINESS SUBCONTRACTING PLAN**

(This template is provided for informational purposes only. The FY 2025 Small Business Subcontracting Plan is a required Contractor submission with the proposal; the DOE approved Plan will be appended to the contract after award.)

**Applicable to the Operations of  
Fermi National Accelerator Laboratory**

## INSTRUCTIONS FOR SMALL BUSINESS SUBCONTRACTING PLAN

FAR 19.708(b) prescribes the use of the Contract's Section I Clause entitled "FAR 52.219-9, Small Business Subcontracting Plan." The following is a suggested model for use when formulating such subcontracting plan. While this model plan has been designed to be consistent with FAR 52.219-9, other formats of a subcontracting plan may be acceptable. However, failure to include the essential information as exemplified in this model may cause a delay in plan review and approval. The use of this model is not intended to waive other requirements that may be applicable under the Contract's Section I Clause entitled "FAR 52.219-9, Small Business Subcontracting Plan." "Subcontract," as defined in the FAR 52.219-9 clause, "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."

### Identification Data

Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

Solicitation or Contract Number: 89243123RSC000083

Item/Service: Basic Research, Management & Operation of Fermi National Accelerator Laboratory (FNAL)

Total Estimated Amount of Contract for the Performance Period: \$ 460.5M

Period of Contract Performance (MO, DAY, & YR): 01/01/2025 - 09/30/2025

1. Type of Plan (check one)

Individual Contract Plan - 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 - Master Plan means a subcontracting plan that contains all of 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.

\_\_\_ Commercial Plan - 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). The contractor must provide a copy of the approved plan. **NOTE: A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items.**

2. Goals

State separate dollar and percentage goals for small business (including Alaska Native Corporations [ANCs] and Indian tribes), veteran-owned small business, service-disabled/veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, as subcontractors, for the performance period January 1, 2025 through September 30, 2025.

- A. Total estimated dollar value of all planned subcontracting, i.e., with all types of concerns under this contract, is \$ \_\_\_\_\_.
- B. Total estimated dollar value and percent of planned subcontracting with small businesses (includes small business, veteran-owned small business, service-disabled/veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns): (% of "A"):  
\$ \_\_\_\_\_ and \_\_\_\_\_%
- C. Total estimated dollar value and percent of planned subcontracting with service-disabled/veteran-owned small businesses (% of "A"):  
\$ \_\_\_\_\_ and \_\_\_\_\_%
- D. Total estimated dollar value and percent of planned subcontracting with veteran-owned small business: (% of "A"):  
\$ \_\_\_\_\_ and \_\_\_\_\_%
- E. Total estimated dollar value and percent of planned subcontracting with HUBZone small businesses (% of "A"):  
\$ \_\_\_\_\_ and \_\_\_\_\_%
- F. Total estimated dollar value and percent of planned subcontracting with small disadvantaged business (% of "A"):  
\$ \_\_\_\_\_ and \_\_\_\_\_%

- G. Total estimated dollar value and percent of planned subcontracting with women-owned small business (% of "A"):  
 \$\_\_\_\_\_ and \_\_\_\_\_%
- H. Total estimated dollar value and percent of planned subcontracting with large business (% of "A"):  
 \$\_\_\_\_\_ and \_\_\_\_\_%
- I. Use the chart below to provide a description of the principal types of supplies and services to be subcontracted under this contract, and indicate the types of business planned for supplying them {i.e., small business (including Alaska Native Corporations [ANCs] and Indian tribes), veteran/owned small business (VOB), service-disabled/veteran-owned small business (SDVOB), HUBZone small business (HUB), small disadvantaged business (SDB), women-owned small business (WOSB), and large business}.

**Business Category or Size**  
 (check all that apply)

Supplies/Services	Large	Small	VOSB	SDVOB	HUBZone	SDB	WOSB

(Attach additional sheets if necessary.)

- J. Provide a description of the method used to develop the subcontracting goals for the small business categories described above in Section 2 entitled "Goals", item "I" and large business concerns (i.e., explain the method and state the quantitative basis (in dollars) used to establish the percentage goals, in addition, how the areas to be subcontracted to small business categories described above in Section 2 entitled "Goals", item "I" and large business concerns were determined --include any source lists used in the determination process:

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- K. Indirect costs have been \_\_\_ have not been \_\_\_ included in establishing the dollar and percentage subcontracting goals stated above. (check one)
- L. If indirect costs have been included, describe the method used to determine the proportionate share of such costs to be incurred with the small business categories described above in Section 2 entitled "Goals", item "I" and large business concerns.

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3. Program Administrator

Name, title, position within the corporate structure, and duties and responsibilities of the employee who will administer the contractor's subcontracting program.

Name: \_\_\_\_\_  
Title/Position: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email Address: \_\_\_\_\_

Duties: Has general overall responsibility for the contractor's subcontracting program, i.e., developing, preparing, and executing subcontracting plans and monitoring performance relative to the requirements of this particular plan. These duties include, but are not limited to, the following activities:

- A. Developing and promoting company-wide policy initiatives that demonstrate the company's support for awarding contracts and subcontracts to small business [categories described above in Section 2 entitled "Goals", item "I"], are included on the services they are capable of providing;
- B. Developing and maintaining bidder's lists of small business (including Alaska Native Corporations [ANCs] and Indian tribes), veteran-owned small business (VOB), service-disabled/veteran-owned small business (SDVOB), HUBZone small business (HUB), small disadvantaged business (SDB), and women-owned small business (WOSB) concerns from all possible sources;
- C. Ensuring that procurement solicitations are designed to permit the maximum possible participation of small business categories [described above in Section 2 entitled "Goals", item "I"] concerns within the applicable purchasing laws, regulations and DOE guidance;

- E. Make arrangements for the utilization of various sources for the identification of small business categories described above in Section 2 entitled “Goals”, item “I”;
- F. Overseeing the establishment and maintenance of contract and subcontract award records;
- G. Attending or arranging for the attendance of company counselors at Small Business Opportunity Workshops, Minority and Women Business Enterprise Seminars, Trade Fairs, Procurements Conferences, *etc.*;
- H. Ensure that small business categories [described above in Section 2 entitled “Goals”, item “I”], concerns are made aware of subcontracting opportunities and how to prepare responsive bids to the company;
- I. Conducting or arranging for the conduct of training for purchasing personnel regarding the intent and impact of Public Law 95-507 on purchasing procedures;
- J. Monitoring the company's performance and making any adjustments necessary to achieve the subcontract plan goals;
- K. Preparing, and submitting timely, required subcontract reports;
- L. Coordinating the company's activities during the conduct of compliance reviews by Federal agencies;
- M. Reviewing solicitations to remove statements, clauses, *etc.*, which may tend to restrict or prohibit small business [categories described above in Section 2 entitled “Goals”, item “I”], concerns participation, where possible.
- N. Ensuring that the bid proposal review board documents its reasons for not selecting low bids submitted by small business [categories described above in Section 2 entitled “Goals”, item “I”].
- O. Ensuring the establishment and maintenance of records of solicitations and subcontract award activity.
- P. Ensuring that historically Black colleges and universities and minority institutions shall be afforded maximum practicable opportunity (if applicable).
- Q. Other duties \_\_\_\_\_  
\_\_\_\_\_

4. Equitable Opportunity

The contractor agrees to ensure that small business [categories described above in Section 2 entitled “Goals”, item “I”] concerns, will have an equitable opportunity to compete for subcontracts. The various efforts include, but are not limited to, the following activities:

A. Describe Outreach efforts to obtain sources (examples listed below):

- (i) Contacting small business trade associations; identify the specific small business category if known. [categories described above in Section 2 entitled “Goals”, item “I”]

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- (ii) Contacting small business development organizations; identify the specific small business development organization if known. [categories described above in Section 2 entitled “Goals”, item “I”]

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- (iii) Attending small business [categories described above in Section 2 entitled “Goals”, item “I”] procurement conferences and trade fairs (to the extent known, identify specific procurement conferences and trade fairs and dates).

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- (iv) Utilizing newspaper and/or magazine ads as well as electronic mediums to encourage new sources.

B. Describe Internal efforts to guide and encourage purchasing personnel (examples listed below):

- (i) Presenting workshops, seminars, and training programs;
- (ii) Establishing, maintaining, and using small business source lists, guides, and other data to assist in the solicitation process [categories described above in Section 2 entitled “Goals”, item “I”]; and

(iii) Monitoring activities to evaluate compliance with the subcontracting plan.

C. Additional efforts: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Flow-Down Clause

The contractor agrees to include the provisions under FAR 52.219-8, "Utilization of Small Business Concerns, in all subcontracts that offer further subcontracting opportunities. The contractor will also require all subcontractors, except small business concerns, that receive subcontracts in excess of \$750,000 (\$1,500,000 for construction) to adopt a plan that complies with the requirements of the clause at FAR 52.219-9, "Small Business Subcontracting Plan".

Such plans will be reviewed by comparing them with the provisions of Public Law 95-507 and assuring that all minimum requirements of an acceptable subcontracting plan have been satisfied. The acceptability of percentage goals shall be determined on a case-by-case basis depending on the supplies/services involved, the availability of potential small business (including Alaska Native Corporations [ANCs] and Indian tribes), veteran-owned small business (VOB), service-disabled/veteran-owned small business (SDVOB), HUBZone small business (HUB), small disadvantaged business (SDB), and women-owned small business (WOSB) and prior experience. Once approved and implemented, plans will be monitored through the submission of periodic reports, and/or, as time and availability of funds permit, periodic visits to subcontractors facilities to review applicable records and subcontracting program progress.

6. Reporting and Cooperation

The contractor gives assurance of (1) cooperation in any studies or surveys that may be required by the contracting agency or the Small Business Administration; (2) submission of periodic reports such as utilization reports, which show compliance with the subcontracting plan; (3) submit timely "Subcontracting Report for Individual Contracts," (ISR) and "Summary Subcontract Report," (SSR) in accordance with the instructions identified on the eSRS website ([www.esrs.gov](http://www.esrs.gov)); and (4) ensure that large business subcontractors with subcontracting plans provide electronic input to the eSRS as required.

7. Record Keeping

The following is a recitation of the types of records the contractor will maintain to demonstrate the procedures adopted to comply with the requirements and goals

in the subcontracting plan. These records will include, but not be limited to, the following:

- A. List the names of guides and other electronic data systems identifying vendor sources;
- B. Organizations contacted in an attempt to locate small business sources; [categories described above in Section 2 entitled “Goals”, item “I”]; and
- C. On a contract-by-contract basis, records on all subcontract solicitations over the Simplified Acquisition Threshold which indicate for each solicitation (1) whether small business concerns were solicited, and if not, why not; (2) whether veteran-owned small businesses were solicited, and if not, why not; (3) whether service-disabled/veteran-owned businesses were solicited, and if not, why not; (4) whether HUBZone small businesses were solicited, and if not, why not; (5) whether small disadvantaged business concerns were solicited, and if not, why not; (6) whether women-owned small businesses were solicited, and if not, why not; and (7) reason for failure of solicited small business, veteran-owned small business, service-disabled/veteran-owned small business, small disadvantaged business, women-owned small business, or HUBZone small business concerns to receive the subcontract award;
- D. Records to support other outreach efforts, e.g., contacts with small disadvantaged business (minority), small business, veteran-owned small business, service-disabled/veteran-owned small business, women-owned small business, HUBZone small business trade associations, attendance at small business, small disadvantaged business (minority), service disabled and veteran-owned small business, women-owned small business procurement conferences and trade fairs;
- E. Records to support internal guidance and encouragement, provided to buyers through (1) workshops, seminars, training programs, incentive awards; and (2) monitoring of activities to evaluate compliance; and
- F. On a contract-by-contract basis, records to support subcontract award data including the name, address and business size of each subcontractor.
- G. Additional records: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Mentor-Protégé Program

The Contractor agrees to establish and implement an official DOE approved “Mentor-Protégé” in accordance with U.S. Department of Energy acquisition regulation (DEAR Part 19). The Small Business Program Manager is the individual designated to administer this program.

This subcontracting plan was submitted by:

Signature: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date Prepared: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Approval:

## **APPENDIX I**

### **DOE DIRECTIVES / LIST B**

(This is the most current list available. An updated listing will be included at contract award.)

**Applicable to the Operations of  
Fermi National Accelerator Laboratory**

**DOE DIRECTIVES**

<u>DIRECTIVES</u>	<u>DATES</u>	<u>TITLE</u>
O 142.3B Change 1	03/02/2022	Unclassified Foreign National Access Program
O 144.1 Change 1	01/16/2009	Department of Energy American Indian Tribal Government Interactions and Policy
O 150.1B	12/21/2021	Continuity Programs
O 151.1D Change 1	10/04/2019	Comprehensive Emergency Management System
O 200.1A Change 2	08/11/2023	Information Technology Management
O 205.1C Change 1	02/23/2022	Department of Energy Cyber Security Program
O 206.1 Change 1	11/01/2018	Department of Energy Privacy Program
O 206.2 Change 1	09/02/2022	Identity, Credential, and Access Management (ICAM)
O 221.1B	09/27/2016	Reporting Fraud, Waste, and Abuse to the Office the Inspector General
O 225.1B	03/04/2011	Accident Investigations
O 221.2A	02/25/2008	Cooperation with the Office of Inspector General
O 226.1B Change 1	05/03/2022	Implementation of Department of Energy Oversight Policy
O 227.1A Change 1	01/21/2020	Independent Oversight Program
O 231.1B Change 1	11/28/2012	Environmental Safety and Health Reporting
O 232.2A Change 1	10/04/2019	Occurrence Reporting and Processing of Operations Information (Reporting for Informational Level Events is not required in the ORPS system. Notification to FSO is required)
O 241.1B Change 1	04/26/2016	Scientific and Technical Information Management
O 243.1C	02/07/2022	Records Management Program
O 251.1D Change 1	11/08/2019	Departmental Directives Program
O 252.1A Change 1	03/12/2013	Technical Standards Program
O 313.1	11/19/2009	Management and Funding of the Departments Overseas Presence
O 341.1A	10/18/2007	Federal Employee Health Services
O 350.1 Change 7	02/19/2020	Contractor Human Resource Management Programs
O 410.2 Change 1	04/10/2014	Management of Nuclear Materials
O 411.2	01/04/2017	Scientific Integrity
O 412.1A Change 1	05/21/2014	Work Authorization System
O 413.2C Change 1	08/02/2018	Laboratory Directed Research and Development
O 413.3B Change 6	01/12/2021	Program and Project Management for the Acquisition of Capital Assets. <i>The Memorandum from S. Binkley (dated 8/2/2018) exempted Capital Asset Projects with a TPC under \$50M from the requirements of this Order, and delegated responsibility for their successful delivery to the cognizant SC Laboratory Director.</i>



G 413.3-5A	09/23/2011	U.S. Department of Energy Performance Baseline Guide
G 413.3-7A	01/12/2011	Risk Management Guide
O 414.1D Change 2	09/15/2020	Quality Assurance
O 420.1C Change 3	11/14/2019	<p>Facility Safety</p> <p>Note (3): Change 2, Tailored Approach: Only the CRD (Attachment 1 to the Order) and Attachment 2, Chapters II and IV are applicable to Fermilab. The other chapters in Attachment 2 as well as Attachment 3 do not apply to the contract since they contain requirements for nuclear facilities and nuclear criticality hazards which do not exist at Fermilab. Additionally, items in Chapter II and Chapter IV of Attachment 2 are tailored as follows:</p> <p>Chapter II</p> <ul style="list-style-type: none"> <li>- The requirements in Section 3.c.(3)(a) regarding safety-class and safety-significant systems is not applicable since there are no nuclear facilities at Fermilab.</li> <li>- The requirements in Section 3.e.(3)(b) and Section 3.e.(3)(d) regarding criticality safety are not applicable since there are no criticality hazards at Fermilab.</li> <li>- The requirement in Section 3.f.(1)(d) regarding nuclear safety basis documentation is not applicable since there are no nuclear facilities at Fermilab.</li> </ul> <p>Chapter IV</p> <ul style="list-style-type: none"> <li>- The requirements in Section 3.a. regarding safety-SSCs and nuclear safety basis documentation are not applicable since there are no nuclear facilities at Fermilab.</li> <li>- The requirements in Section 3.c.(1-2) regarding safety-SSCs and the reference to safety-SSCs in Section 3.c are not applicable since there are no nuclear facilities at Fermilab.</li> <li>- The requirements in Section 3.d of Chapter IV of Attachment 2 are not applicable since there are no nuclear facilities at Fermilab.</li> </ul>
O 420.2D	09/09/2022	Safety of Accelerator Facilities
O 435.1 Change 2	01/11/2021	Radioactive Waste Management
M 435.1-1 Change 3	01/11/2021	Radioactive Waste Management Manual
O 436.1A	04/25/2023	Departmental Sustainability
O 440.2C Change 3	03/21/2023	Aviation Management and Safety
O 442.1B	01/31/2019	DOE Employee Concerns Program
O 442.2 Change 1	10/5/2016	Differing Professional Opinions for Technical Issues Involving Environment, Safety and Health Technical Concerns
O 443.1C	11/26/2019	Protection of Human Research Subjects
O 450.2 Change 1	01/17/2017	Integrated Safety Management
O 458.1 Change 4	09/15/2020	Radiation Protection of the Public and the Environment
O 460.1D Change 1	06/10/2022	Hazardous Materials Packaging and Transportation Safety
O 460.2B	06/10/2022	Departmental Materials Transportation and Packaging

		Management
O 462.1 Change 1	7/10/2013	Import and Export of Category 1 and 2 Radioactive Sources and Aggregated Quantities
O 470.3C Change 1	09/09/2020	Design Basis Threat (DBT) Order
O 470.4B Change 3	09/23/2021	Safeguards and Security Program
O 470.5	06/02/2014	Insider Threat
O 471.7	02/23/2022	Controlled Unclassified Information
O 472.2A	06/10/2022	Personnel Security
O 473.1A	08/30/2021	Physical Protection Program
O 473.2A	08/30/2021	Protective Force Operations
O 474.2A	02/07/2023	Nuclear Material Control and Accountability
O 475.1	12/10/2004	Counterintelligence
O 481.1E Change 1	12/13/2019	Strategic Partnership Projects (Formerly Known as Work for Others (Non-Department of Energy Funded Work))
O 483.1B Change 2	12/13/2019	DOE Cooperative Research and Development Agreements
O 484.1 Change 3	03/21/2023	Reimbursable Work for the Department of Homeland Security
O 486.1A	09/04/2020	Foreign Government Sponsored or Affiliated Activities
O 520.1B Change 1	11/11/2022	Financial Management and Chief Financial Officer Responsibilities
O 522.1A	08/02/2018	Pricing of Departmental Materials and Services
O 550.1 Change 1	12/13/2019	Official Travel
Std. 1090-2011	09/01/2011	Hoisting and Rigging Standard
Std. 1196-2021	7/7/2021	Derived Concentration Technical Standard

**APPENDIX J**

**TREATIES AND INTERNATIONAL  
AGREEMENTS/WAIVED INVENTIONS**

**Applicable to the Operations of  
Fermi National Accelerator Laboratory**

## **Treaties and International Agreements/Waived Inventions**

A list of International Agreements of the United States and Implementing Agreements executed by the U.S. Department of Energy, applicable to this contract, can be accessed through the U.S. Department of State's website at [www.state.gov](http://www.state.gov) using the search term "Treaties in Force". Memorandums of Understanding and Project Annexes are available through the Department of Energy's website at <http://www.energy.gov/ia/iec-documents>.

**APPENDIX K**

**RESERVED**

**Applicable to the Operations of  
Fermi National Accelerator Laboratory**

## **APPENDIX L**

### **PERFORMANCE GUARANTEE**

(To be completed by the Contractor upon submission of the proposal, see Section H Clause entitled “Separate Entity and Performance Guarantee” and Section L Appendix entitled “Performance Guarantee Agreement”).

If the Contractor consists of more than one company, all entities comprising the separate corporate entity shall each provide a performance guarantee for joint and severable liability for the performance of the Contract.)

**Applicable to the Operations of  
Fermi National Accelerator Laboratory**

**PART IV – REPRESENTATIONS AND INSTRUCTIONS**

## SECTION K

### **REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS**

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**K.1 FAR 52.204-8 – ANNUAL REPRESENTATIONS AND CERTIFICATIONS  
(MAR 2023)**

(a) (1) The North American Industry Classification System (NAICS) code for this acquisition is 541715.

(2) The small business size standard is 1,000 employees.

(3) The small business size standard for a concern that submits an offer, other than

(4) on a construction or service acquisition, but proposes to furnish an end item that it did not itself manufacture, process, or produce is 500 employees, or 150 employees for information technology value-added resellers under NAICS code 541519 if the acquisition—

(i) Is set aside for small business and has a value above the simplified acquisition threshold;

(ii) Uses the HUBZone price evaluation preference regardless of dollar value, unless the offeror waives the price evaluation preference; or

(iii) Is an 8(a), HUBZone, service-disabled veteran-owned, economically disadvantaged women-owned, or women-owned small business set-aside or sole-source award regardless of dollar value.

(b) (1) If the provision at [52.204-7](#), System for Award Management, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the provision at [52.204-7](#), System for Award Management, is not included in this solicitation, and the Offeror has an active registration in the System for Award Management (SAM), the Offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The Offeror shall indicate which option applies by checking one of the following boxes:

(i)  Paragraph (d) applies.

(ii)  Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c) (1) The following representations or certifications in SAM are applicable to this solicitation as indicated:

(i) [52.203-2](#), Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(A) The acquisition is to be made under the simplified acquisition procedures in [part 13](#);

(B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(C) The solicitation is for utility services for which rates are set by law or regulation.

(ii) [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$150,000.

(iii) [52.203-18](#), Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements-Representation. This provision applies to all solicitations.

(iv) [52.204-3](#), Taxpayer Identification. This provision applies to solicitations that do not include the provision at [52.204-7](#), System for Award Management.

(v) [52.204-5](#), Women-Owned Business (Other Than Small Business). This provision applies to solicitations that-

(A) Are not set aside for small business concerns;

(B) Exceed the simplified acquisition threshold; and

(C) Are for contracts that will be performed in the United States or its outlying areas.

(vi) [52.204-26](#), Covered Telecommunications Equipment or Services-Representation. This provision applies to all solicitations.

(vii) [52.209-2](#), Prohibition on Contracting with Inverted Domestic Corporations-Representation.

(viii) [52.209-5](#), Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(ix) [52.209-11](#), Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law. This provision applies to all solicitations.

(x) [52.214-14](#), Place of Performance-Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(xi) [52.215-6](#), Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(xii) [52.219-1](#), Small Business Program Representations (Basic, Alternates I, and II). This provision applies to solicitations when the contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied [part 19](#) in accordance with [19.000](#)(b)(1)(ii).

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

(C) The provision with its Alternate II applies to solicitations that will result in a multiple-award contract with more than one NAICS code assigned.

(xiii) [52.219-2](#), Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied [part 19](#) in accordance with [19.000](#)(b)(1)(ii).

(xiv) [52.222-22](#), Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at [52.222-26](#), Equal Opportunity.

(xv) [52.222-25](#), Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at [52.222-26](#), Equal Opportunity.

(xvi) [52.222-38](#), Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial products or commercial services.

(xvii) [52.223-1](#), Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA-designated items; or

include the clause at [52.223-2](#), Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

(xviii) [52.223-4](#), Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA–designated items.

(xix) [52.223-22](#), Public Disclosure of Greenhouse Gas Emissions and Reduction Goals Representation. This provision applies to solicitations that include the clause at [52.204-7](#).

(xx) [52.225-2](#), Buy American Certificate. This provision applies to solicitations containing the clause at [52.225-1](#).

(xxi) [52.225-4](#), Buy American-Free Trade Agreements-Israeli Trade Act Certificate. (Basic, Alternates II and III.) This provision applies to solicitations containing the clause at [52.225-3](#).

(A) If the acquisition value is less than \$50,000, the basic provision applies.

(B) If the acquisition value is \$50,000 or more but is less than \$92,319, the provision with its Alternate II applies.

(C) If the acquisition value is \$92,319 or more but is less than \$100,000, the provision with its Alternate III applies.

(xxii) [52.225-6](#), Trade Agreements Certificate. This provision applies to solicitations containing the clause at [52.225-5](#).

(xxiii) [52.225-20](#), Prohibition on Conducting Restricted Business Operations in Sudan-Certification. This provision applies to all solicitations.

(xxiv) [52.225-25](#), Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran-Representation and Certifications. This provision applies to all solicitations.

(xxv) [52.226-2](#), Historically Black College or University and Minority Institution Representation. This provision applies to solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions.

(2) The following representations or certifications are applicable as indicated by the Contracting Officer:

*[Contracting Officer check as appropriate.]*

(i) [52.204-17](#), Ownership or Control of Offeror.

(ii) [52.204-20](#), Predecessor of Offeror.

(iii) [52.222-18](#), Certification Regarding Knowledge of Child Labor for Listed End Products.

(iv) [52.222-48](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Certification.

(v) [52.222-52](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Certification.

(vi) [52.223-9](#), with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Alternate I only).

(vii) [52.227-6](#), Royalty Information.

(A) Basic.

(B) Alternate I.

(viii) [52.227-15](#), Representation of Limited Rights Data and Restricted Computer Software.

(d) The offeror has completed the annual representations and certifications electronically in SAM website accessed through <https://www.sam.gov>. After reviewing the SAM information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR [4.1201](#)); except for the changes identified below [*offeror to insert changes, identifying change by clause number, title, date*]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR Clause #	Title	Date	Change
_____			

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on SAM.

**K.2 FAR 52.204-24 – REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021)**

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument" in paragraph (c)(1) in the provision at [52.204-26](#), Covered Telecommunications Equipment or Services—Representation, or in paragraph (v)(2)(i) of the provision at [52.212-3](#), Offeror Representations and Certifications-Commercial Products or Commercial Services. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it "does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services" in paragraph (c)(2) of the provision at [52.204-26](#), or in paragraph (v)(2)(ii) of the provision at [52.212-3](#).

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

*Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component* have the meanings provided in the clause [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.*

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(d) *Representation.* The Offeror represents that—

(1) It  will,  will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds "will" in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

It  does,  does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds "does" in paragraph (d)(2) of this section.

(e) *Disclosures.*

(1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded "will" in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded "does" in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and



(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

### **K.3 FAR 52.209-7 – INFORMATION REGARDING RESPONSIBILITY MATTERS (OCT 2018)**

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

*Administrative proceeding* means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

*Federal contracts and grants with total value greater than \$10,000,000* means—

(1) The total value of all current, active contracts and grants, including all priced options; and

(2) The total value of all current, active orders including all priced options under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

*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).

(b) The offeror  has  does not have current active Federal contracts and grants with total value greater than \$10,000,000.

(c) If the offeror checked "has" in paragraph (b) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and Integrity Information System (FAPIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

(1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in—

(A) The payment of a monetary fine or penalty of \$5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.

(2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this provision, whether the offeror has provided the requested information with regard to each occurrence.

(d) The offeror shall post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIS as required through maintaining an active registration in the System for Award Management, which can be accessed via <https://www.sam.gov> (see [52.204-7](#)).

#### **K.4 FAR 52.209-13 – VIOLATION OF ARMS CONTROL TREATIES OR AGREEMENTS-CERTIFICATION (NOV 2021)**

(a) This provision does not apply to acquisitions at or below the simplified acquisition threshold or to acquisitions of commercial products and commercial services as defined in Federal Acquisition Regulation [2.101](#).

(b) *Certification.* [Offeror shall check either (1) or (2).]

(1) The Offeror certifies that—

(i) It does not engage and has not engaged in any activity that contributed to or was a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and Disarmament Act ( [22 U.S.C. 2593a](#)). The report is available at <https://www.state.gov/bureaus-offices/under-secretary-for-arms-control-and-international-security-affairs/bureau-of-arms-control-verification-and-compliance/>; and

(ii) No entity owned or controlled by the Offeror has engaged in any activity that contributed to or was a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and Disarmament Act ( [22 U.S.C. 2593a](#)). The report is available at <https://www.state.gov/bureaus-offices/under-secretary-for-arms-control-and-international-security-affairs/bureau-of-arms-control-verification-and-compliance/>; or

(2) The Offeror is providing separate information with its offer in accordance with paragraph (d)(2) of this provision.

(c) Procedures for reviewing the annual unclassified report (see paragraph (b)(1) of this provision). For clarity, references to the report in this section refer to the entirety of the annual unclassified report, including any separate reports that are incorporated by reference into the annual unclassified report.

(1) Check the table of contents of the annual unclassified report and the country section headings of the reports incorporated by reference to identify the foreign countries listed there. Determine whether the Offeror or any person owned or controlled by the Offeror may have engaged in any activity related to one or more of such foreign countries.

(2) If there may have been such activity, review all findings in the report associated with those foreign countries to determine whether or not each such foreign country was determined to be in violation of its obligations undertaken in an arms control, nonproliferation, or disarmament agreement to which the United States is a party, or to be not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. For clarity, in the annual report an explicit certification of non-compliance is equivalent to a determination of violation. However, the following statements in the annual report are not equivalent to a determination of violation:

- (i) An inability to certify compliance.
- (ii) An inability to conclude compliance.
- (iii) A statement about compliance concerns.

(3) If so, determine whether the Offeror or any person owned or controlled by the Offeror has engaged in any activity that contributed to or is a significant factor in the determination in the report that one or more of these foreign countries is in violation of its obligations undertaken in an arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. Review the narrative for any such findings reflecting a determination of violation or non-adherence related to those foreign countries in the report, including the finding itself, and to the extent necessary, the conduct giving rise to the compliance or adherence concerns, the analysis of compliance or adherence concerns, and efforts to resolve compliance or adherence concerns.

(4) The Offeror may submit any questions with regard to this report by email to [NDAA1290Cert@state.gov](mailto:NDAA1290Cert@state.gov). To the extent feasible, the Department of State will respond to such email inquiries within 3 business days.

(d) Do not submit an offer unless—

(1) A certification is provided in paragraph (b)(1) of this provision and submitted with the offer; or

(2) In accordance with paragraph (b)(2) of this provision, the Offeror provides with its offer information that the President of the United States has

- (i) Waived application under [22 U.S.C. 2593e](#)(d) or (e); or
- (ii) Determined under [22 U.S.C. 2593e](#)(g)(2) that the entity has ceased all activities for which measures were imposed under [22 U.S.C. 2593e](#)(b).

(e) *Remedies*. The certification in paragraph (b)(1) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly submitted a false certification, in addition to other remedies available to the Government, such as suspension or debarment, the Contracting Officer may terminate any contract resulting from the false certification.

## **K.5 FAR 52.230-1 – COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (JUN 2020)**

Note: This notice does not apply to small businesses or foreign governments. This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

### **I. DISCLOSURE STATEMENT-COST ACCOUNTING PRACTICES AND CERTIFICATION**

(a) Any contract in excess of the lower CAS threshold specified in Federal Acquisition Regulation (FAR) 30.201-4(b) resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

Caution: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

(1)  *Certificate of Concurrent Submission of Disclosure Statement.*

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows:

(i) Original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable; and

(ii) One copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or Federal official.)

Date of Disclosure Statement: \_\_\_\_\_ Name and Address of Cognizant ACO or Federal Official Where Filed:

\_\_\_\_\_

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

(2)  *Certificate of Previously Submitted Disclosure Statement.* The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement: \_\_\_\_\_ Name and Address of Cognizant ACO or Federal Official Where Filed:

\_\_\_\_\_

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

(3)  *Certificate of Monetary Exemption.* The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

(4)  *Certificate of Interim Exemption.* The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an

award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under paragraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

*Caution:* Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

## II. Cost Accounting Standards-Eligibility for Modified Contract Coverage

If the offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

*Caution:* An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$50 million or more.

## III. Additional Cost Accounting Standards Applicable to Existing Contracts

The offeror shall indicate below whether award of the contemplated contract would, in accordance with paragraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

<input type="checkbox"/> Yes	<input type="checkbox"/> No
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**K.6 FAR 52.230-7 – PROPOSAL DISCLOSURE—COST ACCOUNTING PRACTICE CHANGES (APR 2005)**

The offeror shall check “yes” below if the contract award will result in a required or unilateral change in cost accounting practice, including unilateral changes requested to be desirable changes.

Yes       No

If the offeror checked “Yes” above, the offeror shall—

- (1) Prepare the price proposal in response to the solicitation using the changed practice for the period of performance for which the practice will be used; and
- (2) Submit a description of the changed cost accounting practice to the Contracting Officer and the Cognizant Federal Agency Official as pricing support for the proposal.

**K.7 DEAR 952.204-73 – FACILITY CLEARANCE (AUG 2016)**

Notices

Section 2536 of title 10, United States Code, prohibits the award of a contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract unless a waiver is granted by the Secretary of Energy. In addition, a Facility Clearance and foreign ownership, control and influence (FOCI) information are required when the contract or subcontract to be awarded is expected to require employees to have access authorizations.

Offerors who have either a Department of Defense or a Department of Energy Facility Clearance generally need not resubmit the following foreign ownership information unless specifically requested to do so. Instead, provide your DOE Facility Clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office which issued this solicitation.

*(a) Use of Certificate Pertaining to Foreign Interests, Standard Form 328.*

(1) The contract work anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the Contractor's organization and access authorizations (security clearances) for Contractor personnel working with the classified information or special nuclear material. To obtain a Facility Clearance the Contractor must submit the Standard Form 328, Certificate Pertaining to Foreign Interests, and all required



supporting documents to form a complete Foreign Ownership, Control or Influence (FOCI) Package. The Contractor will submit the Foreign Ownership, Control or Influence (FOCI) information in the format directed by DOE. When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer.

(2) Information submitted by the offeror in response to the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control or influence and will be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.

(3) Following submission of a Standard Form 328 and prior to contract award, the Contractor shall immediately submit to the Contracting Officer written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Following award of a contract, the Contractor must immediately submit to the cognizant security office written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. 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 must also be furnished concurrently to the cognizant security office.

(b) *Definitions.*

(1) *Foreign Interest* means any of the following -

(i) A foreign government, foreign government agency, or representative of a foreign government;

(ii) Any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and

(iii) Any person who is not a citizen or national of the United States.

(2) *Foreign Ownership, Control, or Influence (FOCI)* means the situation where the degree of ownership, control, or influence over a Contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.

(c) *Facility Clearance* means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being performed at the facility. It is DOE policy that all Contractors or Subcontractors requiring access authorizations be

processed for a Facility Clearance at the level appropriate to the activities being performed under the contract. Approval for a Facility Clearance shall be based upon -

(1) A favorable foreign ownership, control, or influence (FOCI) determination based upon the Contractor's response to the ten questions in Standard Form 328 and any required, supporting data provided by the Contractor;

(2) A contract or proposed contract containing the appropriate security clauses;

(3) Approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;

(4) An established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System if access to nuclear materials is involved;

(5) A survey conducted no more than 6 months before the Facility Clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;

(6) Appointment of a Facility Security Officer, who must possess or be in the process of obtaining an access authorization equivalent to the Facility Clearance; and, if applicable, appointment of a Materials Control and Accountability Representative; and

(7) Access authorizations for key management personnel who will be determined on a case-by-case basis, and must possess or be in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.

(d) A Facility Clearance is required prior to the award of a contract requiring access to classified information and the granting of any access authorizations under a contract. Prior to award of a contract, the DOE must determine that award of the contract to the offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or special nuclear material in the performance of the contract. The Contracting Officer may require the offeror to submit such additional information as deemed pertinent to this determination.

(e) A Facility Clearance is required even for contracts that do not require the Contractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but which require DOE access authorizations for the Contractor's employees to perform work at a DOE location. This type facility is identified as a non-possessing facility.

(f) Except as otherwise authorized in writing by the Contracting Officer, the provisions of any resulting contract must require that the Contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any Subcontractors

requiring access authorizations for access to classified information or special nuclear material shall be directed to provide responses to the questions in Standard Form 328, Certificate Pertaining to Foreign Interests, directly to the prime Contractor or the Contracting Officer for the prime contract.

Notice to Offerors - Contents Review (Please Review Before Submitting)

Prior to submitting the Standard Form 328, required by paragraph (a)(1) of this clause, the offeror should review the FOCI submission to ensure that:

(1) The Standard Form 328 has been signed and dated by an authorized official of the company;

(2) If publicly owned, the Contractor's most recent annual report, and its most recent proxy statement for its annual meeting of stockholders have been attached; or, if privately owned, the audited, consolidated financial information for the most recently closed accounting year has been attached;

(3) A copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents;

(4) A list identifying the organization's owners, officers, directors, and executive personnel, including their names, social security numbers, citizenship, titles of all positions they hold within the organization, and what clearances, if any, they possess or are in the process of obtaining, and identification of the government agency(ies) that granted or will be granting those clearances; and

(5) A summary FOCI data sheet.

**Note:**

A FOCI submission must be attached for each tier parent organization (i.e., ultimate parent and any intervening levels of ownership). If any of these documents are missing, award of the contract cannot be completed.

**K.8 DEAR 952.209-8 – ORGANIZATIONAL CONFLICTS OF INTEREST  
DISCLOSURE-ADVISORY AND ASSISTANCE SERVICES (JUN 1997)  
(DEVIATION)**

(a) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in

performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) All offerors shall provide the statement described in paragraph (c) of this provision. (DEVIATION)

(c) The statement must contain the following:

(1) A statement of any past (within the past twelve months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work. For contractual interests, such statement must include the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable. For financial interests, the statement must include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests enough such information must be provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work.

(2) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated as part of the statement required by (b) of this provision.

(d) Failure of the offeror to provide the required statement may result in the offeror being determined ineligible for award. Misrepresentation or failure to report any fact may result in the assessment of penalties associated with false statements or such other provisions provided for by law or regulation.

**K.9 DEAR 970.5223-3 – AGREEMENT REGARDING WORKPLACE  
SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010)**

(a) Any contract awarded as a result of this solicitation will be subject to the policies, criteria, and procedures of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.

- (b) By submission of its offer, the offeror agrees to provide to the Contracting Officer, within 30 days after notification of selection for award, or award of a contract, whichever occurs first, pursuant to this solicitation, its written workplace substance abuse program consistent with the requirements of 10 CFR part 707. DOE may grant an extension to the notification or implementation period if necessary as per 10 CFR 707.5(g).
- (c) Failure of the offeror to agree to the condition of responsibility set forth in paragraph (b) of this provision, renders the offeror unqualified and ineligible for award.

**K.10 DEAR 970.5227-7 – ROYALTY INFORMATION (DEC 2000)**

- (a) Cost or charges for royalties. If the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be included in the response relating to each separate item of royalty or license fee:
  - (1) Name and address of licensor;
  - (2) Date of license agreement;
  - (3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
  - (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
  - (5) Percentage or dollar rate of royalty per unit;
  - (6) Unit price of contract item;
  - (7) Number of units; and
  - (8) Total dollar amount of royalties.
- (b) Copies of current licenses. In addition, if specifically requested by the Contracting Officer before execution of the contract, the offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents or other basis upon which the royalty may be payable.

### **K.11 DEAR 970.5227-9 – NOTICE OF RIGHT TO REQUEST PATENT WAIVER (DEC 2000)**

Offerors have the right to request a waiver of all or any part of the rights of the United States in inventions conceived or first actually reduced to practice in performance of the contract, in advance of or within 30 days after the effective date of the contract. If such advance waiver is not requested or the request is denied, the Contractor has a continuing right under the contract to request a waiver of the rights of the Government in identified inventions, i.e., individual inventions conceived or first actually reduced to practice in performance of the contract. Contractors that are domestic small businesses and domestic nonprofit organizations may not need a waiver and will have included in their contracts a patent clause reflecting their right to elect title to subject inventions pursuant to the Bayh-Dole Act (*35 U.S.C. 200 et seq.*).

### **K.12 CERTIFICATE PERTAINING TO FOREIGN INTERESTS**

With regard to the Section K Provision entitled “DEAR 952.204-73 – Facility Clearance,” offerors are required to complete all applicable FOCI disclosure forms provided in Attachment A of this section entitled “Foreign Ownership, Control or Influence (FOCI) Package”, which includes a Standard Form 328 – Certificate Pertaining To Foreign Interests. If the offeror has an approved facility clearance, the offeror should identify (1) its DOE Facility Code (or DOE CAGE Code, if applicable), (2) the date the offeror’s completed Standard Form 328 was submitted, and (3) the date of the Contracting Officer’s affirmative FOCI determination.

Offerors must submit a completed and signed SF-328, along with all applicable FOCI disclosure forms, executed in accordance with the form’s instructions with the offeror’s offer/proposal to DOE. In addition, offerors should submit these documents electronically using DOE’s electronic system, which can be accessed at <https://foci.anl.gov/doesub/>. Forms completed on the website can be saved and printed for inclusion in the offeror’s offer/proposal.

### K.13 SIGNATURE/CERTIFICATION

By signing below, the offeror certifies, under penalty of law, that the representations and certifications herein are accurate, current, and complete. The offeror further certifies that it will notify the Contracting Officer of any changes to these representations and certifications. The representations and certification made by the offeror, as contained herein, concern matters within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent representation or certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

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Signature of the Officer or Employee  
Responsible for the Offer

---

Date of Execution

---

Typed Name and Title of the Officer or Employee  
Responsible for the Offer

---

Name of Organization

---

Address

---

City, State, ZIP

## ATTACHMENT A – FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE (FOCI) PACKAGE

Standard Form 328 - Certificate Pertaining To Foreign Interests

### CONTENTS REVIEW REQUIRED BY THE OFFEROR

**Section 836 of the Fiscal Year 1993 Defense Authorization Act (Pub. L. 102-484) prohibits the award of a Department of Energy contract under the national security program to an entity owned or controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the Contract. The Secretary of Energy may determine that a waiver from this requirement is essential to the National Security interests of the United States.**

Prior to forwarding a FOCI submission to DOE, the offeror shall review the FOCI documentation to ensure that:

1. If the offeror is owned by a parent organization(s), the Certificates Pertaining to Foreign Interests Standard Form 328 (REV 11/2018) have been attached for all tier parents, i.e., ultimate parent and any intervening levels of ownership. Each certification must be signed and dated by an authorized official of the respective organization [i.e., a person authorized to represent and sign for the organization as officially recorded by the organization (that is, in the document which sets forth the terms & conditions for its operation & management by laws, operating agreement, partnership agreement, etc.)].

In addition to the executed Certificates Pertaining to Foreign Interests Standard Form 328 (REV 11/2018), an offeror/bidder and, if applicable, its tier parents shall also submit the following to the Contracting Officer:

1. A copy of the U.S. company's articles of incorporation and an attested copy of the U.S. company's by-laws, or similar documents filed for the U.S. company's existence and management, and all amendments to those documents. NOTE: A contractor with a DOE approved facility clearance and, if applicable, its tier parents do not need to provide these documents unless (i) the U.S. company's articles of incorporation and by-laws, or similar documents filed for the U.S. company's existence and management, have been amended; or (ii) the Designated Responsible Security Office has requested the documents. *Contractors with approved facility clearances should identify their Facility Code or CAGE Code if DOD, the date they submitted their Certificate Pertaining to Foreign Interests, and the FOCI determination date to the Contracting Officer.*
2. Complete and return the attached Summary FOCI Data Sheet. The Summary FOCI Data Sheet will enable the Designated Responsible Security Office to review and verify the submitted information in a quicker and more thorough



manner which will provide a quicker determination. NOTE: A contractor with a DOE approved facility clearance and, if applicable, its tier parents do not need to provide the Summary FOCI Data Sheet unless (i) a change(s) has occurred which would affect the answers to the information in the Summary FOCI Data Sheet previously provided by the contractor and/or its tier parents, if applicable; or (ii) the Designated Responsible Security Office has requested the contractor and/or its tier parents to complete and return the Summary FOCI Data Sheet.

3. Consolidated information and statements for the organization's most recently closed accounting year.
  - a. Publicly traded companies (including the ultimate parent, intermediate parent, and subsidiary) shall submit its annual report and Securities and Exchange Commission Form 10-K report for the most recently closed accounting year, as well as its most recent proxy statement for the annual meeting of stockholders.

If the company's stock is not publicly traded but the company has publicly traded debt, the company shall submit its Securities and Exchange Commission Form 10-K report for the most recently closed accounting year.

- b. Privately-owned companies (including the ultimate parent, intermediate parent, and subsidiary) shall submit consolidated financial information (i.e., to include the accounts of the company and its subsidiary companies) for the most recently closed accounting year. The financial information shall be prepared and presented in accordance with generally accepted accounting principles as established by the financial accounting standards board, to include accompanying footnote disclosures. If available, audited financial information shall be provided. If audited financial information is not available, unaudited information shall be provided, but only if accompanied by a certification attesting to the unavailability of audited information.
4. Listing of owners, officers, directors, and executive personnel (OODEP)
  - a. The contractor and all tier parents shall submit a list identifying their respective organizations owners, officers, directors, and executive personnel, to include their complete names; social security numbers; date and place of birth; citizenship; titles of all positions they hold within the organization; and what clearances, if any, they possess or are in the process of obtaining and identification of the Government agency(ies) that granted or will be granting those clearances. If any position is vacant, so state.
  - b. For sole proprietorships operating in community property states (Arizona,

California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, or Wisconsin), information on the sole proprietor's spouse, if applicable, shall also be provided on the OODEP listing.

NOTE: *If any of these documents are missing the Contracting Officer cannot complete award of the contract.*

## REPRESENTATIVE OF FOREIGN INTEREST STATEMENT/CERTIFICATE

### Statement of Full Disclosure of Foreign Connections

Representative of a Foreign Interest (RFI): A citizen or national of the U.S. or an intending citizen to the U.S. Who possesses or is being processed for an access authorization and who is active as a representative of a foreign interest.

Foreign Interest: Any foreign government, agency or a foreign government, or representative of a foreign government; any form of business enterprise or legal entity organization, chartered or incorporated under the laws of any country, other than the U.S. or its possessions and trust territories, and any person who is not a citizen or a national of the U.S.

Name of the foreign interest:

Address of the foreign interest:

Nature of business of foreign interest and the products/services involved. If the products/services are strictly commercial in nature or if there can be military application:

Full details of ownership or affiliation with the foreign interest:

The specific relationship between the foreign interest and the United States organization:

Your job titles and specific duties with the foreign interest:

Percentage of time devoted to foreign interest:

Percentage of U.S. organization's revenues and net income derived from foreign firm during the U.S. organization's most recently closed accounting year:

Name and address of all U.S. facilities where you hold or are in process for an access authorization:

The nature of business of all U.S. organizations and the products/services involved:

Summary of duties with the United States organization. Provide detailed information, as well as position title(s):

Have you ever registered as an Agent of a foreign government as detailed in 18 U.S.C. 219? If so, please provide details:

**CERTIFICATION:**

I recognize my special responsibility to protect classified information and/or special nuclear material from disclosure to any unauthorized person, foreign, or domestic.

TYPE OR PRINT FULL NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

SOCIAL SECURITY NUMBER: \_\_ (Do Not Include SSN with the proposal. It will be required prior to contract award.)

LEGAL NAME OF CONTRACTOR FACILITY: \_\_\_\_\_

### SUMMARY FOCI DATA SHEET

PROVIDE RESPONSES TO THE QUESTIONS IDENTIFIED BELOW: (SUPPLEMENTAL PAGES MAY BE ATTACHED TO PROVIDE COMPLETE AND ACCURATE RESPONSES.)

1. Type of business structure: ( ) corporation; ( ) college/university; ( ) limited liability company; ( ) sole proprietorship; ( ) limited partnership; ( ) general partnership; ( ) other

2. Exact name as specified in charter:  
\_\_\_\_\_

3. All other names used (i.e., dba [doing business as], aka [also known as]):  
\_\_\_\_\_

4. State or other jurisdiction of incorporation or organization:  
\_\_\_\_\_

5. Date of incorporation or organization:  
\_\_\_\_\_

6. Stock ownership: ( ) privately held, ( ) publicly traded.

a.) Class(es) of stock:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b.) Number of shares authorized of each class of stock:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c.) Number of shares issued of each class of stock?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

d.) Explain difference(s) between each class of stock, to include voting rights:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

e.) Is cumulative voting authorized? ( ) YES ( ) NO

7. Current physical address for the principal executive offices, individual point of contact and phone number for FOCI matters and the organization's facility security officer and phone number.

Physical Address \_\_\_\_\_

Facility Security Officer \_\_\_\_\_  
Telephone \_\_\_\_\_

8. List all company names and/or address changes, and the date(s) of such change(s), for the principal executive offices during the past 10 years.

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9. Legal name(s) of all tier parent organizations, if applicable.

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10. Provide the current number of members of the company's Board of Directors, to include identification by name of the Chairman of the Board, if applicable.

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11. Will any parent organizations be performing work requiring access authorizations, and if so, identify by legal name the parent organization(s) name.

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12. Does your organization or any parent organization maintain DOD facility clearances? If yes, please provide the DOD cage code(s).

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**OFFICIAL USE ONLY (WHEN COMPLETED)**

**OWNERS, OFFICERS, DIRECTORS, AND EXECUTIVE PERSONNEL (ODEP)  
 List of Key Management Personnel**

LEGAL COMPANY NAME AND PHYSICAL ADDRESS OF FACILITY LOCATION:

ADDRESS OF COMPANY'S PRINCIPAL EXECUTIVE OFFICES IF DIFFERENT FROM THE PHYSICAL ADDRESS OF THE FACILITY LOCATION:

INDIVIDUAL'S COMPLETE NAME	ALL COMPANY TITLES/POSITIONS HELD BY IDENTIFIED INDIVIDUAL	DATE/PLACE OF BIRTH/CITIZENSHIP (U.S., OTHER, DUAL)	SOCIAL SECURITY NUMBER	IDENTIFY INDIVIDUAL'S SECURITY CLEARANCE(S) LEVEL, ISSUING U.S. GOVERNMENT AGENCY(ies) OR EXCLUSION AND DATE
			Only Submit via the Website. Do Not Include SSN with the Proposal.	
			Only Submit via the Website. Do Not Include SSN with the Proposal.	
			Only Submit via the Website. Do Not Include SSN with the Proposal.	
			Only Submit via the Website. Do Not Include SSN with the Proposal.	
			Only Submit via the Website. Do Not Include SSN with the Proposal.	
			Only Submit via the Website. Do Not Include SSN with the Proposal.	

LIST CERTIFIED CORRECT BY:

Type or Print Name and Signature of Authorized Official

Title

Date Certified

NOTE: SEE NEXT PAGE FOR INSTRUCTIONS REGARDING COMPLETING THIS FORM.

## **INSTRUCTIONS FOR COMPLETION OF THE CERTIFICATE PERTAINING TO FOREIGN INTERESTS**

### **INSTRUCTIONS:**

Provide requested OODEP information in accordance with the following instructions. In addition, the OODEP listing must be certified as being accurate, current, and complete by an authorized official of the organization [i.e., a person authorized to represent and sign for the organization as officially recorded by the organization (that is, in the document which sets forth the terms and conditions for its operation and management--the bylaws, operating agreement, partnership agreement, etc.)] or any other employee, identified by name, of the organization, if designated in writing by such an authorized official as having been delegated authority to execute the Standard Form 328. On behalf of the organization:

Owners. The requested information on owners and representatives or agents of stockholders is to be attached to the organization's OODEP listing:

#### **1. For privately-owned organizations:**

- a. Provide the following information for each person who directly or indirectly owns or has beneficial ownership of 5 percent or more of any class of the organization's securities or who has directly or indirectly subscribed 5 percent or more of the organization's total capital commitment:

- (1) If the beneficial owner holds a position as an OODEP in the organization and is identified on the OODEP listing, provide the individual's name with the class and number of shares of capital stock he/she owns of the organization's securities or the capital commitment he/she has subscribed.

- (2) If the beneficial owner does not hold a position as an OODEP in the organization and is not identified on the OODEP listing, provide the individual's name, address, and the class and number of shares of capital stock he/she owns of the organization's securities or the capital commitment he/she has subscribed. If known, information on the individual's citizenship should also be provided.

- b. Provide the following information for each legal entity which directly or indirectly owns or has beneficial ownership of 5 percent or more of any class of the organization's securities or which has directly or indirectly subscribed 5 percent or more of the organization's total capital commitment:

The legal name (i.e., as specified in charter) with the address of its principal executive offices and the class and number of shares of capital stock the entity owns of the organization's securities or the capital commitment the entity has subscribed. In addition, if the entity is controlled by another organization, the country of ultimate legal residence must be provided.



- c. Provide the name of any representative(s) or agent(s) of any owner (person or entity), if any, who hold positions, such as Board member (or similar type of governing body), officers, executive personnel, or general partners in your organization. Also identify the owner which the individual is representing.

2. For publicly-traded organizations:

- a. Provide the most recent copies of any Schedules 13D and/or 13G received from any beneficial owners (foreign or domestic) who hold 5 percent or more of the organization's securities.
- b. Provide the name of any representative(s) or agent(s) of any stockholder (person or entity), if any, who hold positions, such as Board member (or similar type of governing body), officers, executive personnel, or general partners in your organization. Also identify the stockholder which the individual is representing.

Officers: Identify and provide requested information (i.e., names, titles, etc.) for all of the organization's officers on the OODEP listing.

The definition of officers is: Those persons in positions established as officers as officially recorded by the organization (that is, in the document filed for the organization's existence and the document which sets forth the terms and conditions for its operation and management--the articles of incorporation and bylaws; articles of organization and operating agreement; certificate of limited or general partnership and the partnership agreement; etc.). However, excluded from this definition are: (a) assistant vice presidents who have no management responsibilities related to performance on classified contracts; (ii) assistant secretaries; and (iii) assistant treasurers.

Directors: Identify and provide requested information (i.e., names, titles, etc.) for all of the organization's directors on the OODEP listing, to include identification of the Chairman of the Board and any Vice Chairman. If the organization has no Chairman of the Board of Directors, identify the individual who performs those functions at board meetings.

The definition of directors is: Members of the board or similar governing body chosen to direct the affairs of a corporation or institution.

Executive Personnel: Identify and provide requested information (i.e., names, titles, etc.) for all of the organization's executive personnel on the OODEP listing.

The definition of executive personnel is: Those individuals who perform policy making functions for the organization, or any other person in charge of a principal business unit, division, or function.

Facility Security Officer: Identify and provide requested information (i.e., name, title,

etc.) for the organization's Facility Security Officer.

The definition of a Facility Security Officer is: The individual at the facility assigned the responsibility of administering the requirements of the Safeguards and Security Program within the facility.

Spouse of a sole proprietor: For those sole proprietorships operating in community property states, identify and provide requested information (i.e., all information required on the OODEP listing) on a sole proprietor's spouse, if any. If there is no spouse, so state.

Vacant positions: If any OODEP position is vacant, so state and include estimated date vacancy will be filled.

## INSTRUCTIONS FOR COMPLETION OF THE CERTIFICATE PERTAINING TO FOREIGN INTERESTS

Question #1:

a. Do any foreign person(s), directly or indirectly, own or have beneficial ownership of 5% or more of the outstanding shares of any class of your organization's equity securities? If yes:

-Identify the percentage of any class of stock or other securities issued which are owned by foreign persons, broken down by country. Include indirect ownership through one or more intermediate level(s) of subsidiaries. Indicate voting rights of each class of stock.

-Are there shareholder agreements? If yes, attach a copy(ies), and if none, so state.

-Indicate whether a copy of SEC Schedule 13D/13G report has been received from any investor. If yes, attach a copy(ies).

Note: Ownership of less than 5% should be included if the holder is entitled to control the appointment and tenure of any management position.

b. (For entities which do not issue stock): Has any foreign person directly or indirectly subscribed 5% or more of your organization's total capital commitment? If yes:

-Identify the percentage of total capital commitment which is subscribed by foreign persons.

-Is there an agreement(s) with the subscriber(s)? If yes, attach a copy(ies), and if none, so state.

Question #2: Does your organization directly or indirectly through your subsidiaries and/or affiliates, own 10% or more of any foreign interest? If yes:

-Identify the foreign interest by name, country, percentage owned, and personnel who occupy management positions with the organizations.

-If there are personnel from your organization who occupy management positions with the foreign firm(s), identify the name(s), title, and extent of involvement in the operations of the organizations, (to include access to classified information).

Question #3: Do any non-U.S. citizens serve as members of your organization's board of directors (or similar governing body), officers, executive personnel, general partners, regents, trustees or senior management officials? If yes:

-Identify the foreign person(s) by name, title, citizenship, immigration status and clearance or exclusion status.

-Attach copies of applicable by-laws or articles of incorporation, which describe the affected position(s). However, if you have already provided such copies to the Cognizant Security Agency Industrial Security Representative, so state.

Question #4: Does any foreign person(s) have the power, direct or indirect, to control the election,

appointment, or tenure of members of your organization's board of directors (or similar governing body) or other management positions of your organization, or have the power to control or cause the direction of other decisions or activities of your organization? If yes:

-Identify the foreign person(s) by name, title, citizenship, and all details concerning the control or influence.

Note: If any foreign person(s) have such power, this question shall be answered in the affirmative even if such power has not been exercised, and whether or not it is exercisable through ownership of your facility's securities, if such power may be invoked by contractual arrangements or by other means.

Question #5: Does your organization have any contracts, agreements, understandings, or arrangements with a foreign person(s)? If yes:

For each instance, provide the name of the foreign person, country, percentage of gross income derived, and nature of involvement, including:

-Whether defense/nuclear related or not

-Involvement with classified or export controlled technology

-Compliance with export control requirements

-Where the organization has a large number of involvements and where these involvements are not defense/ nuclear related and represent a small percentage of gross income; the explanation can be a generalized statement addressing the totals by country.

Note: We do not expect and will not require the contractor to ask every customer if he/she falls within the NISPOM definition of a foreign person. We will ask the contractor to provide ongoing security education to those individuals who negotiate and/or administer such agreements regarding their responsibilities to report agreements with a foreign person(s) to the best of their knowledge. The contractor will be certifying the response to this question to "the best of his/her knowledge" or "through his/her best efforts".

Question #6: Does your organization, whether as borrower, surety, guarantor or otherwise have any indebtedness, liabilities or obligations to a foreign person(s)? If yes:

-Provide your overall debt-to-equity ratio (in percentage).

-With respect to indebtedness or liability to a foreign person, indicate to whom indebted or liable, what collateral has been furnished or pledged, and any conditions or covenants of the loan agreement. If stock or assets have been furnished or pledged as collateral, provide a copy of the loan agreement or pertinent extracts thereof (to include procedures to be followed in the event of default).

-If any debentures are convertible, provide specifics.

-If loan payments are in default, provide details.

-This question should be answered in the affirmative if the debt is with a U.S. entity that is

owned or controlled either directly or indirectly by a foreign person. If unknown, so state.

Note: As stated above, we do not expect and will not require the contractor to ask every lender if he/she qualifies as a foreign person. We will ask the contractor to provide ongoing security education to those employees who handle lending arrangements regarding their responsibilities to report any such arrangements with a foreign person lender, to the best of their knowledge. The contractor will be certifying the response to this question as being to "the best of his/her knowledge" or "through his/her best efforts".

Question #7: During your last fiscal year, did your organization derive:

a. 5% or more of its total revenues or net income from any single foreign person.

b. In the aggregate 30% or more of its revenues or net income from foreign persons?

If yes to either part of the question:

-Provide overall percentage of income derived from foreign sources by country, nature of involvement, and type of services or products.

-Indicate if any single foreign source represents in excess of 5% of total revenues or net income.

-Indicate whether any classified information is involved.

-State whether facility is in compliance with applicable export control requirements.

Note: As previously stated, we do not expect and will not require the contractor to ask every customer if he/she qualifies as a foreign person. We will ask the contractor to provide ongoing security education to those employees who handle information about company revenues regarding their responsibility to report revenues derived from a foreign person(s) to the best of their knowledge. The contractor will be certifying the response to this question as being to "the best of his/her knowledge" or "through his/her best efforts".

Question #8: Is 10% or more of your organization's securities held in "nominee shares," in "street names" or in some other method which does not disclose the beneficial owner? If yes:

-Identify each foreign institutional investor holding 10% or more of the voting stock by name and address and the percentage of stock held.

-Indicate whether any investor has attempted to, or has exerted any control or influence over appointments to management positions or influenced the policies of the organization.

-Include copies of SEC Schedule 13D/13G.

Question #9: Do any of the members of your organization's board of directors (or similar governing body), officers, executive personnel, general partners, regents, trustees or senior management officials hold any positions with, or serve as consultants for, any foreign person(s)? If yes:

-Provide the name, title, citizenship, immigration status and clearance or exclusion status on all such persons.

-Identify, by name and address, each foreign organization with which such persons serve and indicate the capacity in which they are serving.

-Include a Statement of Full Disclosure of Foreign Affiliations for every cleared individual who is a representative of a foreign interest.

Note: We expect the contractor to be able to answer this question fully for those individuals holding such positions with his/her foreign subsidiaries and any foreign interests. However, we do not expect and will not require the contractor to ask every individual to ascertain if he/she is serving as a director, officer or manager of a foreign person. We will ask the contractor to provide ongoing security education to all key management personnel of their responsibilities to report serving as an interlocking director or in any other type of positions with a foreign person to the best of their knowledge. The contractor will be certifying the response to this question as being to "the best of his/her knowledge" or "through his/her best efforts".

Question #10: Is there any other factor(s) that indicates or demonstrates a capability on the part of foreign persons to control or influence the operations or management of your organization? If yes:

-Describe the foreign involvement in detail, including why the involvement would not be reportable in the preceding questions.

## DEFINITIONS FOR COMPLETION OF THE CERTIFICATE PERTAINING TO FOREIGN INTERESTS

**Affiliate.** Any entity effective owned or controlled by another entity.

**Beneficial Owner.** The true owner of a security who may, for convenience, be recorded under the name of a nominee. Such ownership entitles the owner to the power to vote or direct the voting of a security or to impose or direct the disposition of a security.

**Bond.** A certificate which is evidence of a debt in which the issuer promises to repay a specific amount of money to the bondholder, plus a certain amount of interest, within a fixed period of time.

**Convertible Debentures.** Bonds which the holder can exchange for shares of voting stock.

**Covenant.** A detailed clause in a lending agreement designed to protect the lender.

**Debenture.** A general debt unsecured by a pledge of any specific piece of property. Like any other general creditor claims, a debenture is secured by any property not otherwise pledged.

**Debt-to-Equity Ratio.** Total liabilities divided by total shareholders' equity (total assets minus total liabilities of a corporation; also called stockholders' equity, equity, and net worth). This shows to what extent owners' equity can cushion creditors' claims in the event of liquidation.

**Equity Security.** An ownership interest in a company, most often taking the form of corporate stock.

**Foreign Interest.** Any foreign government, agency of a foreign government, or representative of a foreign government any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the U.S. or its possessions and trust territories, and any person who is not a citizen or national of the United States.

**Foreign Person.** Any foreign interest and any US person effectively owned or controlled by a foreign interest.

**Guarantor.** One who makes the guaranty (an agreement or promise to answer for the debt, default or miscarriage of another).

**Immigration Status.** Legal basis for a non-US citizen's residence in the United States (e.g., work visa, admission for permanent residence). Note: Immigration and Naturalization Service Form 1-9 is an excellent source for this information.

**Joint Venture.** A partnership or cooperative agreement between two or more persons or firms, usually restricted to a single specific undertaking. Normally the undertaking is of short duration, such as for the design and construction of a dam.

**Liability.** Claim on the assets of a company or individual.

**Licensing Agreement.** A permit granted by one business to another which permits duplication of processes and production of similar items.

**Management Positions.** For the purposes of the questions on this form, management positions shall include owners, officers, directors, partners, regents, trustees, senior management officials, other executive personnel and the facility security officer.

**Nominee Share.** A share of stock or registered bond certificate which has been registered in a name other than the actual owner.

**Proxy.** One who acts for another. Also, the document by which such a representative is authorized to act.

Representative of a Foreign Interest (RFI). A citizen or national of the U.S., who is acting as a representative of a foreign interest (see Foreign Interest).

S.E.C. Schedule 13D. This schedule discloses beneficial ownership of certain registered equity securities. Any person or group of persons who acquire a beneficial ownership of more than 5 percent of a class of registered equity securities of certain issuers must file a Schedule 13D reporting such acquisition with certain other information.

S.E.C. Schedule 13G. This schedule is a much abbreviated version of Schedule 13D that is only available for use by a limited category of "persons" (such as banks, broker/ dealers, and insurance companies) and even then only when the securities were acquired in the ordinary course of business and not with the purpose or effect of changing or influencing the control of the issuer.

Sales Agreement. An agreement between two parties for the sale of goods or services on a continuing basis.

Stock Option. An option is the right to buy or sell at some point in the future.

Street Name. The common practice of registering publicly traded securities in the name of one or more brokerage firms.

Subordinated Debenture. A bond having a claim on assets only after the senior debt has been paid off in the event of liquidation.

Surety. One who is immediately liable for the debt of another if that other person or entity falls to pay.

Total Capital Commitment. The sum of money and other property an enterprise uses in transacting its business.

US Person. Any form of business enterprise or entity organized, chartered or incorporated under the laws of the United States or its possessions and trust territories and any person who is a citizen or national of the United States.



**CERTIFICATE PERTAINING TO FOREIGN INTERESTS**

(Type or print all answers)

OMB No. 0704-0579  
OMB approval expires  
April 30, 2024

**RETURN THE CURRENT FORM AS DESCRIBED BELOW.**

Return the form to your respective Cognizant Security Agency/Office granting the entity's eligibility determination (e.g., facility security clearance) as referenced in 32 CFR Part 2004 under the National Industrial Security Program (NISP); to the Department of Homeland Security for the Classified Critical Infrastructure Protection Program (CCIPP); or, to the Government Contracting Activity for the DoD Enhanced Security Program (DESP). The public reporting burden for this collection of information, 0704-0579, is estimated to average 70 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or burden reduction suggestions to the Department of Defense, Washington Headquarters Services, at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

**PENALTY NOTICE**

Failure to answer all questions or any misrepresentation (by omission or concealment, or by misleading, false, or partial answers) may serve as a basis for denial of clearance for access to classified information. In addition, Title 18, United States Code section 1001, makes it a criminal offense to knowingly make false statements or representations to any Department or Agency of the United States, as to any matter within the jurisdiction of any Department or Agency of the United States. This includes any statement made here in which is knowingly incorrect, incomplete, or misleading in any important particular.

**PROVISIONS**

1. The collection of this information is authorized by the Secretary of Defense, as Executive Agent for the NISP, pursuant to Executive Order 12829, further amended by Section 6, of Executive Order 13691 to include the CCIPP. While you are not required to respond, your entity's eligibility determination cannot be adjudicated if you do not complete the form. The retention of an entity eligibility determination is contingent upon your compliance with the requirements of DoD 5220.22-M or equivalent for submission of an accurate initial or revised form, as appropriate. This collection of information is also authorized by the Secretary of Defense for use in connection with the DESP for the Department of Defense Innovation Initiative in accordance with subsection 951(c) of Public Law 114-328 (10 USC 1564 note). While you are not required to respond, your eligibility to participate in the DESP cannot be determined if you do not complete this form accurately. Participation in the DESP is contingent, among other things, upon your compliance with the requirements of the DESP for submission of an initial or revised form, as appropriate.

2. When this report is submitted in confidence and is so marked, applicable exemptions to the Freedom of Information Act (FOIA) will be invoked to withhold it from the public disclosure if it is responsive to a FOIA request.

3. Complete all questions on this form. Mark "Yes" or "No" for each question. If your answer is "Yes" furnish complete supporting documentation, to include, but not limited to, company or entity charter documents, board meeting minutes, stock or securities information, descriptions of organizational structures; contracts, sales, leases, and/or loan agreements; and revenue documents, annual reports and income statements, etc.

	YES	NO
1. (Answer 1a. or 1b.) a. (For entities which issue stock): Do any foreign person(s), directly or indirectly, own or have beneficial ownership of 5 percent or more of the outstanding shares of any class of your organization's equity securities?	<input type="checkbox"/>	<input type="checkbox"/>
b. (For entities which do not issue stock): Has any foreign person directly or indirectly subscribed 5 percent or more of your organization's total capital commitment?	<input type="checkbox"/>	<input type="checkbox"/>
2. Does your organization directly, or indirectly through your subsidiaries and/or affiliates, own 10 percent or more of any foreign interest?	<input type="checkbox"/>	<input type="checkbox"/>
3. Do any non-U.S. citizens serve as members of your organization's board of directors (or similar governing body), officers, executive personnel, general partners, regents, trustees or senior management officials?	<input type="checkbox"/>	<input type="checkbox"/>
4. Does any foreign person(s) have the power, direct or indirect, to control the election, appointment, or tenure of members of your organization's board of directors (or similar governing body) or other management positions of your organization, or have the power to control or cause the direction of other decisions or activities of your organization?	<input type="checkbox"/>	<input type="checkbox"/>
5. Does your organization have any contracts, agreements, understandings, or arrangements with a foreign person(s)?	<input type="checkbox"/>	<input type="checkbox"/>
6. Does your organization, whether as borrower, surety, guarantor or otherwise have any indebtedness, liabilities or obligations to a foreign person(s)?	<input type="checkbox"/>	<input type="checkbox"/>
7. During your last fiscal year, did your organization derive: a. 5 percent or more of its total revenues or net income from any single foreign person?	<input type="checkbox"/>	<input type="checkbox"/>
b. Is the aggregate 30 percent or more of its revenues or net income from foreign persons?	<input type="checkbox"/>	<input type="checkbox"/>
8. Is 10 percent or more of any class of your organization's voting securities held in "nominee" shares, in "street names" or in some other method which does not identify the beneficial owner?	<input type="checkbox"/>	<input type="checkbox"/>
9. Do any of the members of your organization's board of directors (or similar governing body), officers, executive personnel, general partners, regents, trustees or senior management officials hold any positions with, or serve as consultants for, any foreign person(s)?	<input type="checkbox"/>	<input type="checkbox"/>
10. Is there any other factor(s) that indicates or demonstrates a capability on the part of foreign persons to control or influence the operations or management of your organization?	<input type="checkbox"/>	<input type="checkbox"/>

**REMARKS**  
*(Attach additional sheets, if necessary, for a full detailed statement)*

**CERTIFICATION**

I CERTIFY that the entries made by me above are true, complete, and correct to the best of my knowledge and belief and are made in good faith.

Witnesses:

<b>WITNESS SIGNATURE</b>
<b>DATE</b>
<b>TYPED NAME OF WITNESS</b>

**By**

<b>DATE CERTIFIED</b>
<b>SIGNATURE OF AUTHORIZED CONTRACTOR REPRESENTATIVE</b>
<b>NAME AND TITLE OF AUTHORIZED CONTRACTOR REPRESENTATIVE</b>
<b>TYPED BUSINESS NAME OF CONTRACTOR</b>
<b>ADDRESS</b>

**NOTE:** The witness must be a person who personally observed the Contractor Representative sign this form. The witness cannot be the same person who accepts this form as the Government representative. The name of the witness should be typed or printed under the witness' signature and date.

By executing this form, the Contractor Representative certifies that he or she is the (title)

and has the authority to make the entries above on behalf of the business entity identified above.

## SECTION L

### INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS

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## L.1 INSTRUCTIONS FOR THE SUBMISSION OF PROPOSALS AND UNIFORM CONTRACT

### (a) Definitions

“DOE” means the United States Department of Energy. For purposes of this Request for Proposals (RFP), the word “DOE” means the same as the words “United States” (“U.S.”) and the “Government”.

“Electronic Signature” or “Signature” means a method of signing an electronic message that --

- (1) Identifies and authenticates a particular person as the source of the electronic message; and,
- (2) Indicates such person’s approval of the information contained in the electronic message.

“Offer” means a response to a solicitation that, if accepted, would bind the Offeror to perform the resultant contract. Responses to requests for proposals are called “proposals”. “Proposals”, with respect to this solicitation, means written information submitted to DOE in response to this solicitation, as well as all other information, whether provided orally or by other media, presented by the Offeror during the oral presentation.

“Offeror” means the single legal entity (the potential prime Contractor) submitting the offer. As reflected in Section H Clause entitled “Separate Entity and Performance Guarantee”, the entity may be formed by a single company or it may be a business structure formed by two or more companies formed solely to perform work at Fermi National Accelerator Laboratory. For purposes of this RFP, the word “Contractor” means the same as the word “Offeror.”

“RFP” means the same as “solicitation”.

“SEB” means Source Evaluation Board.

“Team member” means every person or entity that is a member of a Contractor team arrangement (see FAR 9.601) formed by the Offeror.

### (b) General

- (1) The proposal shall be a written submission and an oral presentation which clearly demonstrates the Offeror’s understanding of the Government’s requirements and its capability to perform the prospective contract.

- (2) This section, Section L, provides instructions and other information related to the preparation of a proposal. Offerors are cautioned to follow all of these instructions very carefully in order to ensure the Government receives all requested information and consistent information in a form that will facilitate proposal evaluation. These instructions are not evaluation factors for this solicitation; however, failure to provide the required data may make an Offeror ineligible for award. The evaluation factors are contained in Section M Provision entitled "Capabilities and Approach Evaluation Factors".
  - (3) **The offer must contain the Offeror's best terms because the Government intends to award a contract without discussions.** The Government reserves the right to conduct discussions (see Section L Provision entitled "FAR 52.215-1 – Instructions to Offerors-Competitive Acquisition").
  - (4) A proposal shall be eliminated from further consideration before the initial ratings if the proposal is so grossly and obviously deficient as to be totally unacceptable on its face. For example, a proposal shall be deemed unacceptable if it does not represent a reasonable initial effort to address the essential requirements of the RFP, or if it clearly demonstrates that the Offeror does not understand the requirements of the RFP.
  - (5) Any exceptions or deviations to the terms and conditions of the contract may make the offer unacceptable for award without discussions. If an Offeror proposes exceptions to the terms and conditions of the contract, the Government may make an award without discussions to another Offeror that did not take exceptions to the terms and conditions of the contract.
  - (6) Alternative proposals are not solicited, are not desired, and shall not be evaluated. If multiple proposals are received from the same Offeror, whether inadvertently or intentionally, only the proposal with the most recent timestamp will be evaluated.
  - (7) The Date, Time and Place offers are due is described in Section L Provision entitled "Date, Time, and Place Offers/Proposals are Due".
- (c) Offerors shall submit three (3) separate volumes as follows:
- (1) Volume I – Consists of the Uniform Contract. Any contract awarded as a result of this RFP shall contain Part I – The Schedule, consisting of Section A (Standard Form 33 (SF 33)) and Sections B

through H; Part II – Contract Clauses, consisting of Section I; and Part III – List of Documents, Exhibits, Attachments, consisting of Section J. Volume I shall also contain Part IV – Section K – Representations, Certifications, and Statement of Offerors which will be incorporated in the contract by reference, and any other administrative information.

- Offerors are cautioned that they must complete certain sections of the uniform contract since negotiations are not anticipated. Clauses and Appendices which must be completed by Offerors and included as part of Volume I are, **but may not be limited to**, the following:
  - Standard Form 33 – Block 14 (if applicable), Block 15A including Unique Entity Identifier (UEI) number of Offeror, Block 15B, Block 16, Block 17, and Block 18
  - Section B – Performance Fee
  - Clause H – Responsible Corporate Official
  - Clause H – Activities During Contract Transition
  - Section I – FAR 52.219-28 – Post-Award Small Business Program Rerepresentation (if applicable)
  - Section I – FAR 52.227-23 – Rights to Proposal Data
  - Section J, Appendix C – Special Financial Institution Account Agreement (if applicable)
  - Section J, Appendix D – Contractor’s Commitments
  - Section J, Appendix E – Key Personnel
  - Section J, Appendix H – Small Business Subcontracting Plan
  - Section J, Appendix L – Performance Guarantee
  - Section K
  - Section L, Appendix 4, Attachment 1 – Cost/Price Proposal for Transition Activities
  - Section L, Appendix 6 – Proposed Key Personnel Compensation Cost
- Other fill-ins required to be completed by the Government will be done prior to contract award.
  - Section H – Employee Compensation: Pay and Benefits
  - Section I – FAR 52.247-1 – Commercial Bill of Lading Notations
  - Section I – DEAR 970.5231-4 – Preexisting Conditions
  - Section I – DEAR 970.5232-4 – Obligation of Funds



- Section J, Appendix D – Contractor’s Commitments  
(The Government reserves the right to reject any and all proposed Contractor commitments and to unilaterally modify Appendix D accordingly.)
  - Acceptance Period. An acceptance period of 240 days for block 12 of the SF 33 shall apply, unless the Offeror provides the Government with a longer acceptance period.
  - Signature Authority. The person signing the Standard Form 33 shall have the authority to commit the Offeror to all of the provisions of the offer, fully recognizing that the Government has the right to make an award without further discussion.
  - The Offeror’s signature on the SF 33 constitutes acceptance of the uniform contract (Sections A through K of this RFP) as written.
  - Offerors are not required to submit the complete language from all of the contract clauses in their offer. Submit only those pages that require input of information or a signature.
- (2) Volume II – Capabilities and Approach Proposal. The Capabilities and Approach Proposal, along with the oral presentation, shall clearly demonstrate the Offeror’s understanding of the Government’s requirements and the Offeror’s capability to perform the prospective contract. The Offeror must provide the written information, required by Provisions L.2 through L.6 of this RFP, in Volume II, which fully demonstrates the Offeror’s capability, knowledge, experience, and understanding with respect to the evaluation factors described in Section M Provision entitled “Capabilities and Approach Evaluation Factors” of this RFP. Provisions L.2 through L.6 of this RFP are designed to provide information so that the non-cost evaluation factors specified in Section M Provision entitled “Capabilities and Approach Evaluation Factors” can be evaluated. Cost information and other required documents are described elsewhere and shall not be included in the Capabilities and Approach Proposal.
- Offerors are cautioned to ensure consistency in proposal content, both within individual Factors and across multiple Factors. Proposals that are not internally consistent may be downgraded.
- (3) Volume III – Cost, Fee, Financial and Other Information Proposal. All cost information is to be included in this volume. Requirements for submission of cost information are contained in Section L

Provision entitled “Volume III – Cost, Fee, Financial and Other Information Proposal – Instructions” of this RFP. Pursuant to paragraph (b) of Section L Provision entitled “FAR 52.215.1 – Instructions to Offerors-Competitive Acquisition”, Offerors shall acknowledge receipt of amendments to this solicitation. **In addition to completing Block 14 of the SF 33 to be included in Volume I, Offerors are to provide a written acknowledgement that the Offeror received each amendment to this RFP in Volume III. The written acknowledgement should include identification of each amendment number and the date each amendment was received.**

(d) Cover Sheet Requirements for Proposal/Contract Volumes:

Volumes II and III are required to have a cover sheet containing the information required by paragraph (c)(2) of Section L Provision entitled “FAR 52.215-1 – Instructions to Offerors-Competitive Acquisition”.

(e) Number of Copies of Volumes Required:

The Offeror shall submit one copy of Volumes I, II, and III, inclusive of any and all attachments, electronically through FedConnect.

(f) Page and Size Limitations for Volumes:

- Volumes I and III have no page limitations.
- Volume II has a 150 page limitation, except as otherwise specified. Offerors have discretion on how to utilize the 150 pages for the sections identified in Volume II, except for Section L Provisions entitled “Offeror Engagement” and “Past Performance”, where page limits specified therein are to be followed. All specific page limitations in these Sections are within the overall 150 page limitation unless otherwise specified. If an Offeror exceeds these page limitations, the Government will only evaluate the information contained in the first 150 pages and/or the information contained within the respective page limitations specified for Section L Provisions entitled “Offeror Engagement” and “Past Performance”, as applicable. **No cost information is to be included in Volume II.**

The following size restrictions shall apply to Volume II:

- Except for foldouts, pages shall not exceed 8.5 x 11 inches. Each page shall have top, bottom, left, and right margins of at least one (1) inch. Pages shall be numerically numbered sequentially by volume (e.g., Volume II – 1, Volume II – 2, Volume II – 3, etc.). For the Volume II

Table of Contents and List of Figures/Glossary of Acronyms, the page(s) shall use the following number style: Volume II – i, Volume II – ii, Volume II – iii, etc. Pages containing tables of contents, lists of figures, divider tabs, and similar inserts shall not be counted toward the prescribed page limits UNLESS they include other text. The font to be used is Times New Roman. The font shall not be less than size 12, except as otherwise specified herein. Single spacing may be used except for between paragraphs, in which case double spacing is to be used. Page numbers, any proposal disclosure restrictions, the RFP number, and Offeror's name are the only text that may be displayed in the margins. Offerors may choose any font and font size for text displayed in the margins.

- Font size and type are unrestricted for graphs, tables, spreadsheets, and foldouts where necessary or permitted. Colors may be used for headings, graphs, tables, and to highlight text Offerors want to emphasize. Offerors are cautioned to avoid colors that may make the text hard to read.
  - Foldouts are only permitted for large tables, charts, graphs, diagrams, and other schematics, not for pages of text. Foldouts shall not exceed 11 x 17 inches and shall fold entirely within the volume. Each page of the foldout shall have top, bottom, left, and right margins of at least one (1) inch. Page numbers, any proposal disclosure restrictions, the RFP number, and Offeror's name are the only text that may be displayed in the margins. Each page of a foldout shall count as two (2) pages.
  - Page counting will begin with the first page and continue up to the page limitation. Pages exceeding the page limitation will not be read or evaluated. No material may be incorporated by reference as a means to circumvent any page limitations.
- (g) To facilitate the Source Evaluation Board's (SEB's) search for key words during proposal evaluation, Offerors should ensure that tables, diagrams, charts and/or other graphic illustrations are searchable. Inserts that are predominantly artistic illustrations or pictures and do not contain a significant amount of narrative, are excluded from this request.
- (h) Offers shall not be returned. However, offers can be withdrawn, through FedConnect, at any time prior to the proposal due date.
- (i) Offerors should not assume that because an offeror has had similar contracts with the Federal Government, including the DOE, that the SEB has any prior knowledge of the Offeror's performance under such contracts.

## L.2 SCIENCE VISION AND IMPLEMENTATION PLAN

DOE is interested in selecting a contractor that understands both the Department's mission for FNAL and provides a vision to position FNAL as a world-class leader in science and technology.

(a) Science Vision

The Offeror shall provide documentation that describes its vision for the Laboratory that creates the conditions to enable achievement of the DOE mission, transformational and breakthrough science, and the delivery and optimization of FNAL's world class scientific facilities; enhances the Laboratory's leadership in the national and international arena for research and development; fosters its central role in the international research ecosystem to deliver breakthrough science results; attracts, develops and retains a highly skilled workforce; cultivates and sustains a diverse, equitable, inclusive, and accessible Laboratory culture; and, effectively coordinates activities within the DOE complex, nationally, and internationally. The Offeror's vision shall not simply restate the existing DOE/SC Ten-Year Plan for Fermi National Accelerator Laboratory which can be found at <https://science.osti.gov/-/media/lp/pdf/laboratory-planning-process/FY-2022-ALPs-for-Web.pdf>.

(b) Implementation Plan

The Offeror shall describe its approach for the implementation of its Science Vision. The proposed approach should demonstrate an understanding of the Laboratory's current major research programs (see Section C entitled "Description/Specifications/Statement of Work"), identify any new directions that the Laboratory might take, and discuss how the Laboratory could most effectively contribute to meeting the challenges facing the major programs in Section C entitled "Description/Specifications/Statement of Work". The Offeror shall describe its overall approach to implementing its Science Vision, and shall, at a minimum, include a discussion of its:

- Planned approach to enable achievement of the DOE mission and leverage programs to foster transformational and breakthrough science;
- Planned approach to bring on-line a robust implementation of the LBNF/DUNE and PIP II projects and approach for their future operations and possible upgrades;

- Planned approach for maintaining, enhancing and developing cooperative and collaborative partnerships with universities and industry, including emerging research institutions, to enhance the Laboratory's leadership in the national and international arena for research and development;
- Planned approach for fostering the Laboratory's central role in the international research ecosystem to deliver breakthrough science results;
- Planned approach for attracting, developing, and retaining a highly skilled workforce of existing and new scientific personnel with high stature in their disciplines; plan for joint appointments (if applicable); and how it would use the resources of the Laboratory to help develop and educate the next generation of scientists and engineers;
- Planned approach for cultivating and sustaining a diverse, equitable, inclusive, and accessible Laboratory culture;
- Planned approach to support technology transfer and enhance the Strategic Partnership Projects portfolio; and
- Planned approach to leading and coordinating scientific activities at FNAL and within DOE, nationally and internationally; and the Offeror's approach to maintain engagement and positive relations and communications with DOE and other interested stakeholders.

### **L.3 LABORATORY OPERATIONS**

The Offeror shall demonstrate a thorough understanding of Laboratory Operations necessary to successfully accomplish Sections C.4(c) and C.4(d) of the Statement of Work. The Offeror shall describe its approach for achieving excellence in all areas of operations and business management while maintaining compliance with DOE and other applicable requirements. Areas to be addressed include, but are not limited to:

(Note: These items are not listed in any particular order of importance.)

- Integrated ES&H programs and processes that demonstrate a commitment at all levels within the Laboratory to the safety and health of workers and the public, as well as the protection and restoration of the environment. [See C.4(c)].

- An integrated management system capable of producing implementation-level plans, programs and procedures for the management and operation of the Laboratory.
- A robust, broad scope contractor assurance program to self-assess overall performance and drive continuous improvement of Laboratory operations and management.
- Business management systems [see Section C.4(d)(2)] and how they will be applied to ensure efficient and effective operation, protection and maintenance of the Laboratory's assets, and ability to function as a DOE laboratory.
- Systems for the efficient and effective management of all Laboratory facilities and infrastructure, safeguards and security, cyber security, emergency operations, waste operations, sustainability, and Laboratory strategic planning.
- Involvement of small business in meaningful contract performance, including the extent, variety, and complexity of the work to be performed.
- Developing and maintaining positive community relations and communications with DOE and other interested stakeholders.
- Approach to build, develop, maintain, and encourage a diverse workforce that addresses, at a minimum, the Offeror'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.
- Approach to successfully deliver the Laboratory's project portfolio that details the resources, organization, interfaces, and other elements the Offeror considers necessary.

#### **L.4 OFFEROR ENGAGEMENT**

##### Key Personnel

The Offeror shall propose "Key Personnel" including, at a minimum, the Laboratory Director, Chief Operating Officer, and Chief Research Officer. The Offeror may propose any other senior management position that the Offeror believes is key to its effective management of the organization; however, these other individuals will not be evaluated. The Laboratory Director, Chief Operating Officer, and Chief Research Officer shall be full-time positions principally dedicated to the resultant contract. The letter of

commitment for these three key personnel shall include an acknowledgement that the position is full-time. Key Personnel and other senior management positions may hold joint appointments; however, those joint appointments must avoid conflicts. Any ongoing commitments and potential conflicts of interest shall be identified in the proposal.

Written Material:

Provide a résumé for the Laboratory Director, Chief Operating Officer, and Chief Research Officer, which is to be signed by the individual being proposed, using the format in the Table shown below. This format must be used. Résumés for other Key Personnel will not be evaluated and therefore should not be submitted.

Laboratory Director: There is no page limit for the résumé of the Laboratory Director. A summary of responsibilities for all positions held by the Laboratory Director is required. Note that items 6 through 12 of the résumé format should be appended to the résumé, and that this Appendix Data is not within the page limitation for Volume II.

Chief Operating Officer and Chief Research Officer: For each of these Key Personnel, the limit for items 1 through 5 of the résumé format is three (3) pages per individual. Only provide the information specified in item 5.D. of the résumé format for the jobs held which are relevant to the proposed position. Note that items 6 through 12 for each résumé should be appended to that résumé, and that this Appendix Data is not within the page limitation for Volume II.

<b>Table for Key Personnel Résumé Format</b>	
1.	Name of Offeror:
2.	Name of Key Person:
3.	Proposed Position:
4.	Education: Provide degree(s), if any, attained; discipline(s); year(s) degree(s) attained; and institution(s)
5.	Chronological Work History: Start with current position and work backwards.
A.	Name and Address of Firm(s):
B.	Position(s) Held:
C.	Dates of Employment:
D.	General Summary of Responsibilities: Provide a concise description of major duties, responsibilities, and time in position for each job relevant to the proposed position. Include special assignments and major accomplishments. List leadership positions, type and number of personnel supervised, and size and nature of facility.
E.	Name, Title, Phone Number of Supervisor:
<b>Appendix Data to be appended to the Résumé (no page limit for Appendix Data):</b>	
6.	Professional Affiliations:
7.	Professional Registration(s):

8.	Awards/Special Recognition/Publications/Patents/Other: (please list but do not attach copies)
9.	References: Name, title, address, telephone number. The proposed Laboratory Director should list five (5) references. All others should list three (3) references.
10.	Letter of commitment to accept employment on the contract, commitment to stay at FNAL for a minimum of two (2) years after contract award, and acknowledgement that the position is full-time.
11.	Agreement to relocate to the work area vicinity, as applicable.
12.	Signature of Key Person:
By submission of this information, the Key Person and Offeror authorize DOE to contact educational institutions, references and previous employers provided to verify accuracy. DOE may consider the information received in evaluation of the Offeror's proposed Key Personnel.	

Offerors must list the names of all Key Personnel specified herein, to include those individuals where a résumé is not submitted for evaluation, in Section J, Appendix E entitled "Key Personnel".

Only one (1) individual may be proposed for each résuméd Key Personnel position evaluated under this solicitation. A letter of commitment, as indicated above in the résumé format, shall be submitted by each individual proposed as résuméd Key Personnel. Failure to submit the required letter of commitment from an individual proposed as résuméd Key Personnel will result in the individual not being evaluated for that Key Personnel position and adversely impact the overall evaluation.

Oral Presentation:

The Offeror's résuméd Key Personnel shall describe their qualifications, knowledge, understanding, capability, experience, and demonstrated performance as it relates to their respective position within the management team. The résuméd Key Personnel will not present a recitation of the information contained in their résumés. In addition, résuméd Key Personnel shall specifically address:

- (1) How their credentials, technical and leadership capabilities, and relevant experience, including currency and depth, and previous performance bring value to managing the Laboratory and interacting with DOE;
- (2) Their understanding of their roles, responsibilities, and authorities in the Laboratory's overall management structure, and of the need to collaborate internally;
- (3) Their understanding and approach for resolving scientific and business management barriers affecting accomplishment of the work, including



consistency of their understanding and approach with the written materials submitted;

- (4) Their ability to effectively communicate and cooperate with DOE and each other in order to enhance the successful conduct of the scientific mission and achieve excellence in operations and business management; and
- (5) Their understanding of DOE.

The participation of the Offeror's resumé Key Personnel in the problem-solving exercise(s) will also be used in the evaluation of the Offeror's resumé Key Personnel (see Section L Provision entitled "Oral Presentations").

### Organizational Structure

The Offeror shall provide an organization chart and a description of the proposed organization and leadership structure. All major functional areas which the Offeror considers essential for the operation of the Laboratory are to be reflected in the organizational structure. The proposal shall discuss how the organizational structure will be designed to achieve world-class excellence in research and user facility operations, underpinned and enabled by best-in-class Laboratory operations and business management, and effectively implement the Offeror's proposed Science Vision and Implementation Plan for that Science Vision.

The Offeror shall describe the roles, responsibilities, authorities, and decision making in the Laboratory's overall management structure.

The Offeror shall describe how the units will work together and how the Offeror will collaborate internally. The Offeror shall describe the organizational approach for resolving scientific and business management barriers affecting accomplishment of the work. The Offeror shall describe how its overall management and governance approach enhances its ability to effectively communicate, cooperate and partner with DOE.

### Governance Approach and Corporate Assurance

The Offeror shall describe its approach for providing corporate governance and assurance of the Laboratory, including the role of any supporting Committees and Boards. The Offeror shall also describe the value added by the parent organization(s) in achieving world-class excellence in research, user facility operations, and operations and business management. The Offeror shall provide an accompanying organization chart identifying the linkage(s) to the parent organization(s) and the Offeror's onsite FNAL management team.

### Offeror's Commitments

Offerors shall, on a separate page(s), provide a list of any Offeror's proposed resources, support, and/or commitments (hereafter collectively referred to as "commitments") that will demonstrate how the Offeror plans to reinvest in the scientific mission of the Laboratory, at no additional cost to the Government. Each commitment shall be separately proposed. The description of each commitment shall also include, as applicable, location of the commitment, estimated total value, expected benefits to FNAL, the date the commitment will be provided, and a description of any Governmental action required or related to the commitment. If the Offeror is selected for contract award this list, as accepted by the Government, will be incorporated into the contract as Section J, Appendix D entitled "Contractor's Commitments". Commitments may include, but are not limited to, investments in the scientific community or mission, real or personal property (e.g., facilities or equipment), intellectual property, and human resources. Goods or services offered as commitments are not gifts to the Government and are only available for use during the period of performance of the contract. If commitments are made by anyone other than the Offeror, e.g., parent or affiliated companies, universities, or other institutions, the Offeror shall provide a signed letter on official letterhead from a person authorized to make the proposed commitment to the FNAL contract in order to be considered. Failure to submit any such letters will result in that commitment not being evaluated. The list of commitments and any signed letters of commitment are not part of the page count limitation. Additionally, the Offeror shall provide a plan/strategy for how the commitment(s) will be managed and integrated into FNAL, and any other pertinent information. This plan/strategy shall be included as part of the Offeror's Capabilities and Approach Proposal, Volume II, and shall be included as part of the page count limitation. As previously stated, any costs incurred by the Contractor and/or any other organizations in providing commitments incorporated into the FNAL contract under Section H Clause entitled "Contractor Resources, Commitments and Agreements" are expressly unallowable. The Offeror's proposed commitments shall not include any liability to the Government. The Government reserves the right to unilaterally accept or reject any Offeror proposed commitment(s) under this paragraph.

The Offeror agrees that its offer, as set forth in Volume I, may be modified unilaterally by the Contracting Officer to reflect the commitment(s) offered by the Offeror that is/are accepted by the Government.

## **L.5 PAST PERFORMANCE**

The past performance information submitted shall be on recent and relevant contracts. Recent is defined as current or completed contracts performed within the last three (3) years, in which a minimum of one year has been performed. Relevance is defined in terms of similarity in scope, size, and complexity. For purposes of this RFP, the use of the terms scope, size, and complexity means: scope – similar type of work as identified in Section C Clause entitled "Statement

of Work”; size – in excess of \$50 million in average annual research and development (R&D) revenues/costs (i.e., basic and applied research and engineering development); and complexity – performance challenges, such as operations of a hazardous facility, operations of an FFRDC, complex partnerships with academia and international entities, management of complex business systems, and delivery of major capital projects, etc.

- (1) The Offeror shall submit no more than three (3) Past Performance Information Forms (PPIF) (Section L, Appendix 1) for recent and relevant, continuing/ongoing or completed, contracts, subcontracts, or other operations/activities (one form per contract). If no contracts have been awarded to the Offeror, no more than three (3) PPIFs shall be submitted for each individual entity comprising the Offeror which demonstrates their past performance with respect to their proposed roles/responsibilities. If only one (1) contract has been awarded to the Offeror, the PPIF for that one (1) contract may be submitted, and no more than two (2) additional PPIFs may be submitted for each individual entity comprising the Offeror which demonstrates their past performance with respect to their proposed roles/responsibilities.

There is a three (3) page limit for each PPIF, excluding item 15, “Safety Performance Per Year”. Item 15, of the PPIF, is not within the page limit for Volume II. The safety statistics requested on the form in item 15 are based on standard OSHA definitions or other relevant information, and should be based on the full duration that the Offeror was responsible for the contract, subcontract, or activity.

Item 11, “Description of Activity”, of the PPIF is to be used to provide a brief description of the type of work performed. It is not to be used by the Offeror to address its experience and accomplishments. Pages exceeding the three (3) page limitation specified above will not be evaluated.

- (2) The Offeror shall provide the Past Performance Questionnaire in Section L, Appendix 2, to each technical and contracting point of contact on the references (Blocks 9a and 9b of the PPIF) used for past performance. These reference points of contact shall return the completed Past Performance Questionnaires directly to the Source Evaluation Board (SEB) by email with the form as a PDF attachment to: [FNALcompetition@science.doe.gov](mailto:FNALcompetition@science.doe.gov). The subject line of the email shall read, “Past Performance Questionnaire”.

The Past Performance Questionnaire must be submitted directly from the reference to DOE. This information should be submitted by the due date for receipt of proposals; however, DOE receipt of the questionnaires is not subject to Section L Provision entitled, “FAR 52.215-1 – Instructions to Offerors - Competitive Acquisition,” related to late proposals. The Offeror

shall be responsible for following up with reference points of contact and for ensuring that the Past Performance Questionnaire for each reference is completed and returned to the Government on time.

- (3) The Offeror shall provide a list of any Government contracts terminated (partially or completely) within the past three (3) calendar years, including the contract number, dollar amount of the contract, brief description of the work, reason for termination, sponsoring agency, and the name and telephone number of the Contracting Officer. If no contracts have been awarded to the Offeror, this requirement applies to each individual entity comprising the Offeror. If less than three (3) contracts have been awarded to the Offeror, this requirement applies to each individual entity comprising the Offeror, as well as the Offeror itself.

Performance of predecessor organization (e.g., a name change, purchased by, take over etc., in which the resources of the current organization are really the same as the prior company) may be considered if the Government believes that information is relevant to the past performance evaluation. The Government may contact and consider performance information from others not identified.

Information from sources that the Government determines to have a vested interest (e.g., affiliate, parent company, etc.) in the Offeror shall be considered to have a conflict of interest and will not be included in the evaluation.

The SEB may seek and consider supplemental information regarding past performance and references from sources other than those identified by the Offeror. Any contacts with another agency or outside source shall be documented in writing and shall include the date, party contacted, purpose and general summary of the conversation. This written record, together with any other written documentation provided by the agency or outside source, will be maintained in the official solicitation file. Any information obtained will be used for both the responsibility determination and the best value decision.

## **L.6 TRANSITION PLAN**

The Offeror shall provide a Transition Plan covering a maximum phase-in period of three (3) months prior to assuming responsibility for the management and operations of the Laboratory. This plan should describe the Offeror's management approach for the transition activities set forth in Section H Clause entitled "Activities During Contract Transition", as applicable, including its "home office" assistance, staffing and qualifications of the transition team, equipment and other support requirements, as well as interactions with the Laboratory and DOE, and any other items/activities the Offeror deems necessary. Limited space will be made available at FNAL for transition activities of the Offeror. This plan should address specific steps necessary to assume full responsibility for

management and operation of FNAL as of 12:01A.M., January 1, 2025. It should include milestones for the steps that would be completed during this transition period and beyond. Identify any potential impacts on the continuity of operations and plans for their elimination or mitigation.

**L.7 VOLUME III – COST, FEE, FINANCIAL AND OTHER INFORMATION  
PROPOSAL – INSTRUCTIONS**

The Offeror shall provide the following information for the evaluation of Volume III, as identified below. All cost, fee, and financial information shall be included in Volume III. Given the nature of performance-based management and operating contracts, Offerors will not be required to provide, nor will the Government determine, an estimate of overall contract costs. The cost proposal shall consist of information on the Offeror's Key Personnel (only those with evaluated résumés, see Section L Provision entitled "Offeror Engagement") costs for two (2) years, transition costs, fee information, and any other information as specified herein. For evaluation purposes, the transition period is projected to begin on October 1, 2024 and end on December 31, 2024. The Offeror shall provide a separately priced cost proposal, in Volume III, that consists of three (3) parts:

- (1) The Offeror's transition costs for a transition period, not to exceed 90 days;
- (2) The Offeror's Key Personnel (only those with evaluated résumés) costs for the first two (2) years after completion of the transition period (January 1, 2025 through December 31, 2026); and,
- (3) The Offeror's proposed total performance fee for the five (5) year base period.

(a) Transition Costs

The transition period (not to exceed 90 days) will be from the date of contract award through December 31, 2024 (see Section F Clause entitled "Period of Performance"). **Reimbursement for the allowable costs of the transition period will be on a cost-reimbursement (no fee) basis, subject to the cost principles of FAR 31, DEAR 931, and DEAR 970.31.** The maximum allowable cost for transition which will be reimbursable by the Government will be the amount included by the Offeror in Section H Clause entitled "Activities During Contract Transition" and submitted to the Government in Volume III. The amount included in Section H Clause entitled "Activities During Contract Transition" shall be supported by the cost estimate required below.

The Offeror shall provide a cost estimate for all transition activities that addresses the elements enumerated below. The information submitted must follow the format provided in Section L, Appendix 4 entitled “Instructions for Submitting Cost/Price Proposals for Transition Activities”, must address the total cost of the transition period by major transition activity, and must be in sufficient detail to allow for evaluation of the reasonableness and cost realism of all transition activities set forth in Section H Clause entitled “Activities During Contract Transition”. Proposed costs must be broken down by the following major cost elements: direct labor (including number of personnel hours and dollars), fringe benefits, indirect cost allocations (by pool type and rate), relocation (if incurred for any key personnel identified in the proposal and intended to be charged to the contract as an allowable cost), travel, facilities, materials, supplies, subcontracts, space/lease costs, and all other cost elements in excess of \$25K related to the period of transition. Relocation costs shall be in accordance with FAR Part 31. Proposed rates for indirect costs and fringe benefits should be briefly explained.

(b) Key Personnel Costs

As part of the evaluation of the cost to the Government of doing business with each Offeror, the Government will evaluate the total compensation and associated fringe benefits for the Laboratory Director, Chief Operating Officer, and Chief Research Officer for the first two (2) years after the completion of the transition period, January 1, 2025 through December 31, 2026. With regard to these Key Personnel costs, the Offeror shall provide narrative support sufficient to explain the development of the costs proposed. The narrative shall describe the Offeror’s supporting rationale, market surveys and benchmarks (including position to market), the estimating methodologies used, and the basis of any other data provided in support of the proposed costs. Proposals should be sufficiently detailed to demonstrate their reasonableness and realism.

In addition, for each of the résuméd Key Personnel, separately identify the employee’s proposed compensation utilizing the table provided in Section L, Appendix 6.

- These amounts shall be separately identified for each year (January 1, 2025 to December 31, 2025 and January 1, 2026 to December 31, 2026).
- For purposes of this requirement, the term “compensation” is defined by FAR 31.205-6(p).
- The current cap on the reimbursement of compensation costs for Contractor employees is \$646,000. This cap is adjusted annually to

reflect the change in the Employment Cost Index for all workers as calculated by the Bureau of Labor Statistics.

- Section H Clause entitled “Employee Compensation: Pay and Benefits” states that “The base salary reimbursement level for the top contractor official establishes the maximum allowable salary reimbursement under the contract”. Excluding the Laboratory Director, DOE’s interpretation of “maximum allowable salary reimbursement” includes incentive pay-at-risk agreed to between the employer and employee at the beginning of the performance year.

(c) Performance Fee

The maximum available performance fee pool for this contract is as specified in the tables below through December 31, 2029. Also refer to Section B Clause entitled “Allowability of Subcontractor Fee”.

The Offeror shall propose a maximum annual earnable performance fee in Section B Clause entitled “Performance Fee” for the first five (5) years. The fee proposed for each year shall not exceed, but may be less than, the maximum fee amounts specified below:

Base Contract Period:

<b>Performance Period</b>	<b>Maximum Performance Fee (millions)</b>
1/1/2025 – 9/30/2025	\$4.173M
10/1/2025 – 9/30/2026	\$5.564M
10/1/2026 – 9/30/2027	\$5.564M
10/1/2027 – 9/30/2028	\$5.564M
10/1/2028 – 9/30/2029	\$5.564M
10/1/2029 – 12/31/2029	\$1.391M

Note: Base fee under this contract is \$0. All fee dollars shall be in performance fee and at risk. The estimated budget for the contract performance period is approximately \$614 Million annually.

Home office expenses and corporate oversight expenses, whether direct or indirect, relating to activities of the Offeror, except as otherwise

specifically agreed to in writing by the Contracting Officer are unallowable (see Section H Clause entitled “Advance Understandings Regarding Additional Items of Allowable and Unallowable Costs and Other Matters”). The Offeror shall not submit home office expense or corporate oversight expense information with the proposal.

- (d) This award is subject to Cost Accounting Standards (CAS) and submission of a Disclosure Statement is required (see Section K Clause entitled “FAR 52.230-1 – Cost Accounting Standards Notices and Certification”). Offerors currently covered by these requirements should provide the name and phone number of the Federal office responsible for appraising their Disclosure Statement.
- (e) Other Required Financial Information

- (1) Financial Statements. For the Government’s use in determining responsibility under FAR 9.1, provide audited/certified financial statements for the three (3) most recently completed accounting periods. Financial statements shall at least include as applicable: a balance sheet, statement of operations (profit and loss), statement of changes in financial position, the most recent Securities and Exchange Commission (SEC) filings (10K and 10Q), and any explanatory notes for each financial statement.
- (2) Full and complete cost and financial information shall be provided for each individual entity comprising the separate corporate entity, as well as the proposing separate corporate entity itself. The proposing separate corporate entity shall provide the specifically identified information in sections (a), (b), (d), and (e) above.

In addition, Offerors are to include a copy of the charter/organizational document(s) that govern the relationship between the parties comprising the separate corporate entity.

- (3) Reconciliation of the RFP and accounting system. If the Offeror’s estimating and/or accounting practices differ from the requested Cost and Fee Proposal content, the Offeror shall use this reconciliation to explain any differences.
- (4) Offerors shall provide the name, address, and telephone number for the cognizant Administrative Contracting Officer and the cognizant Audit Agency Office, if applicable.

- (f) Acknowledgment of Amendments



Offerors are to provide a written acknowledgement that the Offeror received each amendment to this RFP in Volume III. This acknowledgement shall include identification of each amendment number and the date that each amendment was received. Block 14 of SF 33 should also be completed and provided in Volume I.

## L.8 ORAL PRESENTATIONS

### (a) General

After submission of the proposal, each Offeror will be required to make an oral presentation (see requirements in Section L Provision entitled “Offeror Engagement”) to the DOE SEB and other Government representatives involved in the evaluation of the proposals. Oral presentations will take place approximately four (4) weeks after receipt of written offers. The oral presentation, including the Offeror’s response to the problem-solving exercise and the question and answer session, will not constitute part of the written offer, and it is not the Government’s intent to incorporate any portion of the oral presentation into any contract resulting from this RFP. The oral presentation will be evaluated in accordance with Section M.

### (b) How the Government Will Conduct the Oral Presentation

The oral presentation shall occur after submission of the Offeror’s written proposal. A written cross-cutting problem(s) will be provided to the Offeror during the oral presentation for evaluation in accordance with Section M Provision entitled “Capabilities and Approach Evaluation Factors”. All Offerors will be provided the same problem(s) and given the same amount of time to prepare and present their responses.

The Offeror may prepare and use visual materials to respond to the problem. The Government shall keep those materials and their content may be used in the evaluation. Such information shall not be used to remedy proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. Questions will be used to further the Government’s understanding of the oral presentation. The Government will only ask questions during the individual presentations to address immediate information needs that cannot wait until the time scheduled for questions and answers (e.g., unfamiliar words or to request something be repeated because it was not heard clearly). The Government shall strictly enforce oral presentation time limits.

The oral presentation and the question and answer session will not include discussions of any of the elements of the proposed contract; will not

constitute discussions, as defined in FAR 15.306(d); will not obligate the Government to conduct discussions or to solicit final revised offers; nor will the information communicated during the oral presentation become part of any contract resulting from this RFP. Rather, these communications will be solely for the purpose of clarification of the Offeror's oral presentation. Members of the SEB and others involved in the evaluation of offers may be present at the oral presentation. The oral presentation shall not change any written materials submitted. The information provided by Offerors, and Offerors' answers to questions posed by the SEB, will be utilized by the SEB in its evaluation of each proposal received.

(c) Presenters and Attendees

Each proposed résuméd key personnel, as well as the responsible corporate official (see Section H Clause entitled "Responsible Corporate Official"), shall be physically present during the oral presentation. Failure of any résuméd key personnel to participate in the oral presentation could adversely affect the evaluation. Offerors may bring other non-résuméd key personnel who may participate in the preparation of the problem-solving exercise. However, only résuméd key personnel may participate in the Offeror's presentation of the response to the problem. Offerors may bring up to two (2) additional observers who are not allowed to participate in any manner in the oral presentation, including assisting Offerors in preparing and responding to the given problem(s). Also, Offerors may bring up to two (2) support staff members responsible for setting up and running equipment to support the Offeror's presentation. Each attendee shall wear a name tag designating who they are, and their proposed position at FNAL or their role at the oral presentation (e.g., Laboratory Director, Responsible Corporate Official, Observer, Support Staff, etc.). Attendees are prohibited from contacting anyone else during the oral presentation.

(d) Scheduling

The SEB will schedule the oral presentations via lottery and will notify each Offeror of the date and time of its oral presentation. The Government shall notify Offerors within ten (10) business days after the date for receipt of proposals of the date and time of the oral presentation, and shall provide any other instructions needed. Oral presentations shall start approximately four (4) weeks after the date for receipt of proposals. Oral presentations will be held in the vicinity of the Fermi National Accelerator Laboratory.

The Government reserves the right to reschedule the oral presentation at its discretion, and the Government shall not consider requests to reschedule the oral presentation except in extenuating circumstances (e.g., personal illness, death in the family, or other emergency).

The schedule for each Offeror's oral presentation will be as shown below.  
DOE will strictly enforce time limits.

<b>ORAL PRESENTATION SCHEDULE</b>		
<b>TIME ALLOCATION</b>		<b>ACTIVITY</b>
7:30 a.m.	8:30 a.m.	Presentation room available to Offeror
8:30 a.m.	8:45 a.m.	DOE Introductions and Instructions
8:45 a.m.	9:00 a.m.	Proposed Laboratory Director and Responsible Corporate Official Opening Remarks
9:00 a.m.	11:00 a.m.	Presentations by résuméd Key Personnel (must include one 15-minute break scheduled at the Offeror’s discretion – see note below)
11:00 a.m.	11:15 a.m.	Break
11:15 a.m.	11:30 a.m.	Written Problem(s) Presented to Offeror
11:30 a.m.	2:30 p.m.	Offeror Problem Preparation Time / Lunch
2:30 p.m.	3:30 p.m.	Offeror Provides Problem Response
3:30 p.m.	3:45 p.m.	Break
3:45 p.m.	4:45 p.m.	Questions & Answers
4:45 p.m.	5:00 p.m.	Closing Remarks from Proposed Laboratory Director and Responsible Corporate Official

NOTE: Offerors will be given the latitude to space the one 15-minute break to fit the presentation. If not scheduled during the presentation by the Offeror, the one 15-minute break will be enforced by DOE.

(e) Method of Presentation

The Offeror may use any means it wishes to make its oral presentation except for pre-recorded videotaped presentations. The Offeror must supply all equipment and materials necessary for its oral presentation. At the end of the oral presentation, for record purposes, the Offeror shall provide the SEB with an electronic copy via email sent to FNALcompetition@science.doe.gov of any documents and/or slides presented. Offerors are reminded to consider marking the materials with any appropriate restrictive legends.

(f) Video/Audio Recording of Oral Presentation

The Offeror is prohibited from recording (either audio or video) its own presentation. However, the Government will videotape the entirety of each Offeror's oral presentation session, including the Offeror's problem preparation time, and the question and answer session. The SEB also reserves the right to be present during the Offeror's preparation time.

**L.9 DEAR 970.5215-5 – LIMITATION ON FEE (DEC 2000)**

- (a) For the purpose of this solicitation, fee amounts shall not exceed the total available fee allowed by the fee policy at 48 CFR 970.1504-1-1, or as specifically stated elsewhere in the solicitation.
- (b) The Government reserves the unilateral right, in the event an Offeror's proposal is selected for award, to limit: fixed fee to not exceed an amount established pursuant to 48 CFR 970.1504-1-5; and total available fee to not exceed an amount established pursuant to 48 CFR 970.1504-1-9; or fixed fee or total available fee to an amount as specifically stated elsewhere in the solicitation.

**L.10 SUBMISSION OF THE SMALL BUSINESS PLAN**

In accordance with Section I Clause entitled "FAR 52.219-9 – Small Business Subcontracting Plan", an acceptable Small Business Subcontracting Plan is required prior to contract execution. Offerors are reminded that said Subcontracting Plan is required to be submitted as part of Volume I. Offerors are encouraged to use the Small Business Subcontracting Plan format set forth as Section J, Appendix H.

The Offeror, in developing its proposed plan, shall establish specific goals for each small business category as follows:

- (1) small businesses (includes small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and woman-owned small business concerns);
- (2) service-disabled veteran-owned small business;
- (3) veteran-owned small business;
- (4) HUBZone small business;
- (5) small disadvantaged business; and

- (6) woman-owned small business.

The Offeror’s plan shall address the fifteen (15) elements identified in FAR 52.219-9(d). The Offeror shall establish goals that afford small businesses with the maximum practicable opportunity to participate in contract performance consistent with efficient performance.

DOE has established the following small business subcontracting goals for FY24:

Small Business (SB)	49%
Small Disadvantaged Business (SDB)	5%
Women-Owned Small Business (WOSB)	5%
HUBZone Small Business (HUB)	3%
Service-Disabled Veteran-Owned Business (SDVOB)	3%

Each Offeror is strongly encouraged to consider this information in establishing goals under its proposed Small Business Subcontracting Plan.

**L.11 DEAR 970.5209-1 – REQUIREMENT FOR GUARANTEE OF PERFORMANCE (DEC 2000) (DEVIATION)**

The successful Offeror is required by other provisions of this solicitation to organize a dedicated corporate entity to carry out the work under the contract to be awarded as a result of this solicitation. The successful Offeror will be required, as part of the determination of responsibility of the existing or newly organized, dedicated corporate entity and as a condition of the award of the contract to that entity, to furnish a guarantee of that entity’s performance. That guarantee of performance must be satisfactory in all respects to the Department of Energy.

**L.12 ORGANIZATIONAL CONFLICT OF INTEREST (OCI)**

The statement of work includes certain work activities that may present an OCI. A contract shall not be awarded to any Offeror having an unresolved OCI. (See Section K Clause entitled “DEAR 952.209-8 – Organizational Conflicts Of Interest Disclosure-Advisory and Assistance Services”.)

**L.13 RESPONSIBLE PROSPECTIVE CONTRACTORS**

- (a) Responsible Offerors (1) meet the requirements of FAR Part 9.1 and DEAR 909; (2) do not have an organizational conflict of interest (OCI) or an OCI that cannot be mitigated or avoided (see Section K Clause entitled “DEAR 952.209-8 – Organizational Conflicts Of Interest Disclosure-Advisory and Assistance Services”); (3) have a favorable foreign

ownership, control, or influence (FOCI) determination; (4) have accepted and signed the Performance Guarantee; (5) are in compliance with Executive Order 11246; (6) are registered in the System for Award Management (see Section L Provision entitled “FAR 52.204-7 – System for Award Management”); and (7) are in compliance with Section I Clause entitled “FAR 52.222-37 – Employment Reports on Veterans” and Section L Provision entitled “FAR 52.222-38 – Compliance with Veterans’ Employment Reporting Requirements”, as applicable.

- (b) The Government may conduct pre-award surveys in accordance with FAR 9.106 and may solicit from available sources, any relevant information concerning the Offeror’s record of past performance. The Government may use this information in making determinations of contractor responsibility.

#### **L.14 INTENT TO SUBMIT AN OFFER**

Offerors intending to submit an offer are requested to provide the following via email to [FNALcompetition@science.doe.gov](mailto:FNALcompetition@science.doe.gov) no later than the close of business 15 business days after the RFP is released. The subject of the email should read “Intent to Submit an Offer”.

- (a) Solicitation Number 89243123RSC000083
- (b) Name of Proposing Offeror
- (c) Address (including zip code) of Proposing Offeror
- (d) Identify all entities comprising the Proposing Offeror
- (e) Identify all team members (if not included in item (d) above), including subcontractors, that will be submitted as part of the proposal
- (f) Name and Title of person submitting the Intent

Any response does not commit or restrict interested parties in any way regarding their future participation in this process.

#### **L.15 DATE, TIME, AND PLACE OFFERS/PROPOSALS ARE DUE**

- (a) **Proposals, and any modifications, are due on March 4, 2024, no later than 5:00 p.m. Central Time. Proposals must be submitted electronically through FedConnect at <https://www.fedconnect.net>.**
- (b) Submission of proposals through FedConnect:

- The Offeror must be registered in FedConnect at <https://www.fedconnect.net>. The Offeror must also be registered in the System for Award Management at <https://www.sam.gov>.
  - Files submitted through FedConnect must be submitted in a searchable PDF format.
  - It is imperative that the Offeror understand how to submit its proposal using the FedConnect web portal. All proposal documents required by this solicitation must be uploaded and received in their entirety in the FedConnect Responses web portal by the proposal due date. Failure to submit a response that is received through the FedConnect Responses web portal by the proposal due date may result in the proposal not being considered.
  - DOE does not provide help desk assistance regarding FedConnect. Questions regarding FedConnect shall be addressed directly to FedConnect in accordance with instructions found on its website.
- (c) The Offeror assumes full responsibility for ensuring that the proposal is received by the date and time specified above. Offerors are strongly encouraged to start the proposal submission process well in advance of the proposal due date/time. Proposals submitted other than as specified above will not be considered.
- (d) Late proposals, modifications, revisions, and withdrawals will be treated as specified in paragraph (c)(3) of Section L Provision entitled "FAR 52.215-1 – Instructions to Offerors – Competitive Acquisition".

#### **L.16 FAR 52.215-1 – INSTRUCTIONS TO OFFERORS-COMPETITIVE ACQUISITION (NOV 2021)**

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

*Discussions* are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

*In writing*, "writing," or "written" means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.



*Proposal modification* is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

*Proposal revision* is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

*Time*, if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) *Amendments to solicitations*. If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) Submission, modification, revision, and withdrawal of proposals.

(1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show—

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) Submission, modification, revision, and withdrawal of proposals.

(i) Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii)

(A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and-

*(1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or*

*(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or*

*(3) It is the only proposal received.*

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile

received at any time before award, subject to the conditions specified in the provision at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) *Offer expiration date.* Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) *Restriction on disclosure and use of data.* Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall-

(1) Mark the title page with the following legend:

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed-in whole or in part-for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of-or in connection with-the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [*insert numbers or other identification of sheets*]; and

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) Contract award.

(1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror whose proposal represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(i) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.

(ii) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(iii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(iv) A summary of the rationale for award.

(v) For acquisitions of commercial products, the make and model of the product to be delivered by the successful offeror.

(vi) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

#### **L.17 ELECTRONIC MEDIA – SOLICITATION AND AMENDMENT DISTRIBUTION**

- (a) In order to further the Government's policy of maximizing electronic commerce and making the acquisition process optimally cost effective, electronic media will be the sole method used for distributing the solicitation and amendments to the public. The solicitation, any amendments and various available reference documents will be posted on the FNAL Competition website at: <https://science.osti.gov/Acquisition-Management/M-and-O-Competitions>.
- (b) This electronic medium will constitute the official distribution method for this solicitation. All amendments and any other official communications from DOE regarding this solicitation will be posted through this medium. Offerors and other interested parties will need to maintain continual surveillance of the website to remain abreast of the latest available information; thus, Offerors and other interested parties are encouraged to utilize the website's "mailing list" feature.
- (c) The FNAL Competition website will contain various available reference documents and links to other organizational websites of interest for the

Offeror's information and use in connection with preparing a proposal under this solicitation. Offerors are cautioned that the information, reference documents and organizational websites contained in the URL address are not intended to be all-inclusive. Offerors are strongly urged to perform their own additional research using these and other available sources.

- (d) No other communication, whether oral or in writing, will modify or supersede the terms of the solicitation.

## **L.18 QUESTIONS ON SOLICITATION**

All questions or comments regarding this solicitation shall be submitted to the official FNAL Competition email address at [FNALcompetition@science.doe.gov](mailto:FNALcompetition@science.doe.gov). Submission of solicitation questions/comments by other means is not authorized. All questions regarding the RFP must be submitted no later than ten (10) calendar days prior to the date the proposals are due. Questions submitted after this date may not be answered and may not be a basis for amending this solicitation. Questions and answers, if appropriate, will be posted to the FNAL Competition website.

## **L.19 PRE-PROPOSAL CONFERENCE**

A virtual pre-proposal conference will be scheduled approximately one week after release of the RFP. The specific date and time will be posted on the FNAL Competition website. Prospective Offerors are encouraged to attend. In no event shall failure to participate in the pre-proposal conference constitute grounds for a claim against the Government.

For further information, please check the FNAL competition website at: <https://science.osti.gov/Acquisition-Management/M-and-O-Competitions>.

## **L.20 SITE TOURS**

A site tour will be offered approximately two weeks after release of the RFP. The specific date and time will be posted on the FNAL Competition website. Prospective Offerors are encouraged to attend. In no event shall failure to participate in the site tour constitute grounds for a claim against the Government.

For further information, please check the FNAL competition website at: <https://science.osti.gov/Acquisition-Management/M-and-O-Competitions>.

**L.21 FAR 52.237-1 – SITE VISIT (APR 1984)**

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

**L.22 SMALL BUSINESS SIZE STANDARDS AND SET-ASIDE INFORMATION (UNRESTRICTED)**

This acquisition is unrestricted and contains no set-aside provisions. The North American Industry Classification System (NAICS) Code is 541715.

**L.23 FALSE STATEMENTS**

Offers shall set forth full, accurate, and complete information as required by this solicitation (including attachments). The penalty for making false statements is prescribed in 18 USC 1001.

**L.24 EXPENSES RELATED TO OFFEROR SUBMISSION AND COMMITMENT OF PUBLIC FUNDS**

The Contracting Officer is the only individual who can legally commit the Government to the expenditure of public funds. Any other commitment, either explicit or implied, is invalid. This solicitation does not commit the Government to pay any costs incurred in the preparation or submission of any proposal or offer or to procure or contract for any services.

**L.25 FINAL PERSONNEL INFORMATION**

(a) Existing Bargaining Agreements (also refer to Section H Clauses entitled “Activities During Contract Transition” and “Workforce Transition”).

- (1) Approximately 3.05% of the workforce at Fermi National Accelerator Laboratory, or 63 employees, are covered by three (3) collective bargaining agreements, with two (2) unions. The selected Offeror will be expected to provide employment terms and conditions consistent with those provided under the current agreements until bargaining unit employees electing to organize have transitioned to new collective bargaining agreements.
- (2) The following are the existing collective bargaining agreements:

- International Association of Fire Fighters, AFL-CIO, Local No. I-21
- International Association of Machinists and Aerospace Workers, AFL-CIO, Local 701 (Maintenance, Electricians, Mechanics)
- International Association of Machinists and Aerospace Workers, AFL-CIO, Local 701 (Machinist/Welders)

These documents are available on the SEB website,  
<https://science.osti.gov/Acquisition-Management/M-and-O-Competitions/Document-Library/Contractor-Human-Resources>

- (b) Joint Appointments (see Section J, Appendix A entitled “Advance Understanding on Human Resources”).

There are approximately 27 joint appointees at FNAL. All joint appointments are reimbursed according to the percentage of time the joint appointee works at FNAL.

- (c) Employee Retention, Compensation and Benefits (also refer to Section H Clauses entitled “Activities During Contract Transition” and “Workforce Transition”).

(1) FNAL’s “Incumbent” workforce of approximately 2,062 is employed under five (5) employee types (regular, fixed term, on call, seasonal, and temporary). See Section L, Appendix 5 for the entire FNAL workforce by all appointment categories. Subject to the availability of funds, the Contractor shall offer employment to all transferring employees in “Regular”, “Fixed-Term”, and “Temporary” appointments who, as of the date the Contractor assumes responsibility for the contract, are in good standing and are engaged in performance of work within the scope of work under this contract. Nothing in this paragraph shall preclude the Contractor from separating employees when in its judgment it is appropriate to do so based on the employee’s performance or conduct. Furthermore, the Contractor is not required to retain discretionary incumbent management employees as defined in Section H clause entitled “Workforce Transition”.

(2) The contractor shall provide retained incumbent employees equivalent pay for at least the first year of the contract and equivalent benefits to those provided by the incumbent contractor. All non-incumbent employees shall receive a total pay and benefits package that provides for market-based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with contract



requirements. The Contractor shall become the plan sponsor of pension and other post-retirement benefit plans (PRBs), as applicable, for those individuals who retired from employment at FNAL with the predecessor contractor prior to the last day of contract transition.

- (3) Definitions. Incumbent and non-incumbent employees are defined in Section H Clause entitled “Employee Compensation: Pay and Benefits”.
- (4) Employees of FNAL are covered under the following retirement plan:
  - Fidelity Investments, 401(a) Retirement Plan for Employees of Fermi Research Alliance, LLC (401(a) Plan), Defined Contribution Plan. (<https://www.fidelity.com/>)
- (5) Any pension plan maintained by the Contractor, for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan which provides credit for service not performed under a DOE cost-reimbursement contract, and shall meet the requirements of the Internal Revenue Code (IRC) and the Employee Retirement Income Security Act (ERISA), as applicable.

## **L.26 CONTACTS REGARDING FUTURE EMPLOYMENT**

Contacts with the Incumbent Contractor employees regarding future employment are permitted; however, such contacts and interviews must take place outside the normal working hours of the employees and at off-site locations. No on-site contacts of any kind with employees of the current Incumbent Contractor are permitted related to this solicitation until contract award. Offerors are reminded, however, that they are prohibited from contacting anyone about procurement sensitive information relating to this solicitation. (Refer to FAR 2.101 and 3.104.)

## **L.27 FAR 52.204-7 – SYSTEM FOR AWARD MANAGEMENT (OCT 2018) (DEVIATION) (PF 2023-41)**

- (a) Definitions. As used in this provision—

Electronic Funds Transfer (EFT) indicator means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System

for Award Management records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

*Registered in the System for Award Management (SAM)* means that—

- (1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14) into SAM
- (2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in SAM;
- (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 offeror 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".

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

- (b)
  - (1) An Offeror is required to be registered in SAM when submitting an offer or quotation, at the time of award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation. A failure to register in SAM or a lapse in SAMs registration may be treated by the Contracting Officer as a correctable matter of responsibility.
  - (2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "Unique Entity Identifier" followed by the unique entity identifier that identifies the Offeror's name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the Contracting Officer to verify that the Offeror is registered in the SAM.
- (c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at www.sam.gov for establishment of the unique entity

identifier directly to obtain one. The Offeror should be prepared to provide the following information:

- (1) Company legal business name.
  - (2) Tradestyle, doing business, or other name by which your entity is commonly recognized.
  - (3) Company physical street address, city, state, and Zip Code.
  - (4) Company mailing address, city, state and Zip Code (if separate from physical).
  - (5) Company telephone number.
  - (6) Date the company was started.
  - (7) Number of employees at your location.
  - (8) Chief executive officer/key manager.
  - (9) Line of business (industry).
  - (10) Company headquarters name and address (reporting relationship within your entity).
- (d) Processing time should be taken into consideration when registering. Offerors who are not registered in SAM should consider applying for registration immediately upon receipt of this solicitation. See <https://www.sam.gov> for information on registration.

**L.28 FAR 52.204-16 – COMMERCIAL AND GOVERNMENT ENTITY CODE REPORTING (AUG 2020)**

(a) Definition. As used in this provision –

*Commercial and Government Entity (CAGE) code means–*

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

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located

outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

(b) The Offeror shall provide its CAGE code with its offer with its name and location address or otherwise include it prominently in its proposal. The CAGE code must be for that name and location address. Insert the word "CAGE" before the number. The CAGE code is required prior to award.

(c) CAGE codes may be obtained via—

(1) Registration in the System for Award Management (SAM) at [www.sam.gov](http://www.sam.gov). If the Offeror is located in the United States or its outlying areas and does not already have a CAGE code assigned, the DLA Commercial and Government Entity (CAGE) Branch will assign a CAGE code as a part of the SAM registration process. SAM registrants located outside the United States and its outlying areas shall obtain a NCAGE code prior to registration in SAM (see paragraph (c)(3) of this provision).

(2) The DLA Contractor and Government Entity (CAGE) Branch. If registration in SAM is not required for the subject procurement, and the Offeror does not otherwise register in SAM, an Offeror located in the United States or its outlying areas may request that a CAGE code be assigned by submitting a request at <https://cage.dla.mil>.

(3) The appropriate country codification bureau. Entities located outside the United States and its outlying areas may obtain an NCAGE code by contacting the Codification Bureau in the foreign entity's country if that country is a member of NATO or a sponsored nation. NCAGE codes may be obtained from the NSPA at <https://eportal.nspa.nato.int/AC135Public/scage/CageList.aspx> if the foreign entity's country is not a member of NATO or a sponsored nation. Points of contact for codification bureaus, as well as additional information on obtaining NCAGE codes, are available at <http://www.nato.int/structur/AC/135/main/links/contacts.htm>.

(d) Additional guidance for establishing and maintaining CAGE codes is available at <https://cage.dla.mil>.

(e) When a CAGE code is required for the immediate owner and/or the highest-level owner by Federal Acquisition Regulation (FAR) 52.204-17 or 52.212-3(p), the Offeror shall obtain the respective CAGE code from that entity to supply the CAGE code to the Government.

(f) Do not delay submission of the offer pending receipt of a CAGE code.

(g) If the solicitation includes FAR clause 52.204-2, Security Requirements, a subcontractor requiring access to classified information under a contract shall be identified with a CAGE code on the DD Form 254. The Contractor shall require a subcontractor requiring access to classified information to provide its CAGE code with its name and location address or otherwise include it prominently in the proposal. Each location of subcontractor performance listed on the DD Form 254 is required to reflect a corresponding unique CAGE code for each listed location unless the work is being performed at a Government facility, in which case the agency location code shall be used. The CAGE code must be for that name and location address. Insert the word "CAGE" before the number. The CAGE code is required prior to award.

**L.29 FAR 52.215-22 – LIMITATIONS ON PASS-THROUGH CHARGES- IDENTIFICATION OF SUBCONTRACT EFFORT (OCT 2009)**

- (a) Definitions. Added value, excessive pass-through charge, subcontract, and subcontractor, as used in this provision, are defined in the clause of this solicitation entitled "Limitations on Pass-Through Charges" (FAR 52.215-23).
- (b) General. The offeror's proposal shall exclude excessive pass-through charges.
- (c) Performance of work by the Contractor or a subcontractor.
  - (1) The offeror shall identify in its proposal the total cost of the work to be performed by the offeror, and the total cost of the work to be performed by each subcontractor, under the contract, task order, or delivery order.
  - (2) If the offeror intends to subcontract more than 70 percent of the total cost of work to be performed under the contract, task order, or delivery order, the offeror shall identify in its proposal-
    - (i) The amount of the offeror's indirect costs and profit/fee applicable to the work to be performed by the subcontractor(s); and
    - (ii) A description of the added value provided by the offeror as related to the work to be performed by the subcontractor(s).

- (3) If any subcontractor proposed under the contract, task order, or delivery order intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed under its subcontract, the offeror shall identify in its proposal-
  - (i) The amount of the subcontractor's indirect costs and profit/fee applicable to the work to be performed by the lower-tier subcontractor(s); and
  - (ii) A description of the added value provided by the subcontractor as related to the work to be performed by the lower-tier subcontractor(s).

**L.30 FAR 52.216-1 – TYPE OF CONTRACT (APR 1984)**

The Government contemplates award of a performance-based, cost-reimbursement, award fee and award term incentive management and operating contract resulting from this solicitation.

**L.31 FAR 52.222-24 – PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION (FEB 1999)**

If a contract in the amount of \$10 million or more will result from this RFP, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of \$10 million or more shall be subject to a pre-award compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.

**L.32 FAR 52.222-38 – COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (FEB 2016)**

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (*i.e.*, if it has any contract containing Federal Acquisition Regulation clause 52.222-37, Employment Reports on Veterans), it has filed the most recent VETS-4212 Report required by that clause.

**L.33 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.

**L.34 FAR 52.233-2 – SERVICE OF PROTEST (SEP 2006); MODIFIED BY DEAR 952.233-2 (MAY 2010)**

- (a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from:

Jud Kingman  
Contracting Officer  
U.S. Department of Energy  
Office of Science  
ORNL Site Office  
P.O. Box 2008, MS 6269  
Oak Ridge, TN 37830  
Telephone: (865) 576-0418  
Email: [FNALcompetition@science.doe.gov](mailto:FNALcompetition@science.doe.gov) and  
[Judson.Kingman@science.doe.gov](mailto:Judson.Kingman@science.doe.gov)

- (b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.
- (c) Another copy of a protest filed with the Government Accountability Office shall be furnished to the following address within the time periods described in paragraph (b) of this clause: U.S. Department of Energy, Assistant General Counsel for Procurement and Financial Assistance (GC-61), 1000 Independence Avenue, S.W., Washington, DC 20585, Fax: (202) 586-4546.

**L.35 DEAR 952.233-4 – NOTICE OF PROTEST FILE AVAILABILITY (AUG 2009)**

- (a) If a protest of this procurement is filed with the Government Accountability Office (GAO) in accordance with 4 CFR Part 21, any actual or prospective Offeror may request the Department of Energy to provide it with reasonable access to the protest file pursuant to FAR 33.104(a)(3)(ii), implementing section 1065 of Public Law 103- 355. Such request must be in writing and addressed to the Contracting Officer for this procurement.
- (b) Any Offeror who submits information or documents to the Department for the purpose of competing in this procurement is hereby notified that information or documents it submits may be included in the protest file that will be available to actual or prospective Offerors in accordance with the requirements of FAR 33.104(a)(3)(ii). The Department will be required to make such documents available unless they are exempt from disclosure pursuant to the Freedom of Information Act. Therefore, Offerors should mark any documents as to which they would assert that an exemption applies. (See 10 CFR part 1004.)

**L.36 DEAR 952.233-5 – AGENCY PROTEST REVIEW (SEP 1996)**

Protests to the Agency will be decided either at the level of the Head of the Contracting Activity or at the Headquarters level. The Department of Energy's agency protest procedures, set forth in DEAR 933.103, elaborate on these options and on the availability of a suspension of a procurement that is protested to the agency. The Department encourages potential protesters to discuss their concerns with the Contracting Officer prior to filing a protest.

**L.37 DEAR 970.5223-3 – AGREEMENT REGARDING WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010)**

- (a) Any contract awarded as a result of this solicitation will be subject to the policies, criteria, and procedures of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.
- (b) By submission of its offer, the officer agrees to provide to the Contracting Officer, within 30 days after notification of selection for award, or award of a contract, whichever occurs first, pursuant to this solicitation, its written workplace substance abuse program consistent with the requirements of 10 CFR part 707. DOE may grant an extension to the notification or implementation period if necessary as per 10 CFR 707.5(g).
- (c) Failure of the Offeror to agree to the condition of responsibility set forth in paragraph (b) of this provision, renders the Offeror unqualified and ineligible for award.



**L.38 DEAR 970.5227-7 – ROYALTY INFORMATION (DEC 2000)**

- (a) Cost or charges for royalties. If the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be included in the response relating to each separate item of royalty or license fee:
- (1) Name and address of licensor;
  - (3) Date of license agreement;
  - (3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
  - (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
  - (5) Percentage or dollar rate of royalty per unit;
  - (6) Unit price of contract item;
  - (7) Number of units; and
  - (8) Total dollar amount of royalties.
- (b) Copies of current licenses. In addition, if specifically requested by the Contracting Officer before execution of the contract, the offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents or other basis upon which the royalty may be payable.

**L.39 DEAR 970.5227-9 – NOTICE OF RIGHT TO REQUEST PATENT WAIVER (DEC 2000)**

Offerors have the right to request a waiver of all or any part of the rights of the United States in inventions conceived or first actually reduced to practice in performance of the contract, in advance of or within 30 days after the effective date of contracting. If such advance waiver is not requested or the request is denied, the Contractor has a continuing right under the contract to request a waiver of the rights of the Government in identified inventions, i.e., individual inventions conceived or first actually reduced to practice in performance of the contract. Contractors that are domestic small businesses and domestic nonprofit organizations may not need a waiver and will have included in their contracts a

patent clause reflecting their right to elect title to subject inventions pursuant to the Bayh-Dole Act (35 U.S.C. 200 et seq.).

**L.40 APPENDIX B – PERFORMANCE EVALUATION AND MEASUREMENT PLAN (PEMP)**

Section J, Appendix B entitled “Performance Evaluation and Measurement Plan” (PEMP) will be used to evaluate the Incumbent Contractor’s performance for FY 2024. This FY 2024 PEMP is provided for illustrative purposes only. The FY 2025 FNAL PEMP which will be included in the awarded contract will follow the standard PEMP format provided for in the Office of Science (SC) procedures and guidance for the SC Laboratory Performance Appraisal Process which can be found at <https://science.osti.gov/lp/Laboratory-Appraisal-Process>.

**L.41 DISPOSITION OF INTELLECTUAL PROPERTY FOR TECHNOLOGY TRANSFER**

A mission of FNAL is to partner with private industry and transfer technology to the private sector for utilization and commercialization, consistent with the policy, principles, and purposes of the Stevenson-Wydler Technology Transfer Act of 1980, as amended (15 U.S.C. 3710a). The Contractor will have the authority and responsibility for carrying out the technology transfer obligation under the Technology Transfer Mission clause of the Prime Contract (DEAR 970.5227-3).

To facilitate technology transfer and commercialization of technology developed at the Laboratory, a small businesses or nonprofit Contractor will have the right to elect to retain title to inventions under Public Law 98-620. Patent and invention rights will be governed by DEAR 970.5227-10.

For the Contractor that does not qualify as a small business or nonprofit organization under Public Law 98-620, it is expected that DOE will issue a class waiver of DOE patent rights. Under the class waiver, the Prime Contractor will be able to elect to retain title to inventions made in the performance of the contract. Patent and invention rights will be governed by DEAR 970.5227-12.

**L.42 FAR 52.252-5 – AUTHORIZED DEVIATIONS IN PROVISIONS (NOV 2020)**

- (a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the provision.
- (b) The use in this solicitation of any Department of Energy Acquisition Regulation (48 CFR Chapter 9) provision with an authorized deviation is

indicated by the addition of "(DEVIATION)" after the name of the regulation.

#### **L.43 PROVISIONS INCORPORATED BY REFERENCE**

FAR and DEAR provisions referenced within the solicitation may be located at <http://www.acquisition.gov/far/> and <http://energy.gov/management/downloads/searchable-electronic-department-energy-acquisition-regulation>, respectively.

#### **L.44 AVAILABILITY OF REFERENCED DOCUMENTS AND OTHER USEFUL DOCUMENTS**

Documents available for information and use in preparing offers are indexed at the following web links:

<https://science.osti.gov/Acquisition-Management/M-and-O-Competitions>

<https://www.fnal.gov>

<http://science.energy.gov>

<https://www.fedconnect.net/FedConnect/default.htm>

<https://www.sam.gov/content/opportunities>

<https://www.acquisition.gov/dears>

<http://www.acquisition.gov/far/>

#### **L.45 SECTION L APPENDICES**

Appendix 1 – Past Performance Information Form

Appendix 2 – Past Performance Questionnaire Cover Letter and Past Performance Questionnaire

Appendix 3 – Performance Guarantee Agreement

Appendix 4 – Instructions for Submitting Cost/Price Proposals for Transition Activities

Appendix 5 – FNAL Workforce by Appointment Category

## Appendix 6 – Proposed Key Personnel Compensation Cost

**Appendix 1 – Past Performance Information Form**

1. Complete Name of Customer	
2. Current Customer Address and Telephone Number	
3. Contract Number and Type of Contract	4. Date of Contract Award
5. Date Work Commenced	6. Date Work Ended
7. Initial Contract Price/Cost and Fee	8. Final Amount Invoiced/Amount Invoiced to Date
9a. Technical Point of Contact (include address, email address and telephone number)	9b. Contracting Point of Contact (include address, email address and telephone number)
10. Activity Title	
11. Description of Activity	
12. Description of Problems and Conflicts Encountered	
13. Regulatory Performance	

14. Current Status of Contract (Choose One)

- Work Continuing, on Schedule
- Work Continuing, Behind Schedule
- Work Complete, Litigation Pending or Underway
- Work Completed, No Further Action Pending or Underway
- Work Completed, Routine Administrative Action Pending or Underway
- Work Completed, Claims Negotiations Pending or Underway
- Terminated for Convenience
- Terminated for Default
- Other (explain)

15. Safety Performance Per Year

Workplace fatalities

Total Recordable Case (TRC) Rate

Days Away, Restricted, or Transferred (DART) Rate

DART Case Rate

Fire loss statistics

Worker compensation rate

Average annual worker radiation effective dose equivalent

Environmental releases in excess of regulatory enforcement limits

Number of regulatory enforcement actions

ES&H citations and associated fines

Notices of Violation (NOVs) and monetary amount associated with violation
If there were OSHA or DOE citations or NOVs, have all citations or NOVs been corrected? If no, what percentage remain open?
Compliance: Describe any significant ES&H compliance issues, along with the basis and the actual or proposed resolution:

**If more space is needed, please feel free to attach additional pages.**

**Appendix 2 - Past Performance Questionnaire Cover Letter**

(Past Performance Questionnaires shall be sent directly to the Source Evaluation Board (SEB) as a PDF attachment to: FNALcompetition@science.doe.gov. The subject line of the email shall read, "Past Performance Questionnaire".)

Date

Dear \_\_\_\_\_:

The Department of Energy (DOE) is seeking your assistance.

\_\_\_\_\_ is submitting a proposal for a DOE Contract with an estimated value of approximately \$614 million per year. We are asking you to complete the attached questionnaire to help us evaluate \_\_\_\_\_'s performance.

Please use the following definitions to provide your ratings:

- 4 - Outstanding – Performance was substantially and consistently above contract requirements. Contractor displayed an overall superior understanding of contract requirements, and used innovative approaches leading to enhanced performance.
- 3 - Good – Performance was above minimum contract requirements. Contractor displayed a thorough understanding of contract requirements.
- 2 - Satisfactory – Performance met minimum contract requirements.
- 1 - Marginal – Performance was below minimum contract requirements. Contractor displayed a lack of thorough understanding of contract requirements in one or more significant performance areas.
- 0 - Unsatisfactory – Completely failed to meet the minimum contract requirements. Contractor displayed a total lack of understanding of contract requirements.
- NA - Not applicable
- DK - Don't know – No knowledge available to rate this question.

Please feel free to provide an explanatory narrative under REMARKS. If more space is needed, please attach additional pages. We greatly appreciate your time and assistance in completing this questionnaire. Please provide the following information:

**Respondent: Please fill in the following table:**

Item	Fill-In
Name	
Title	
Organization Name	
Organization Address (including City, State, Zip)	
Telephone Number (w/area code)	
Facsimile Number (w/area code)	
Email Address	



**Past Performance Questionnaire**

- |  |          |   |         |   |   |    |    |
|--|----------|---|---------|---|---|----|----|
| 1. Assess the contractor's adherence to contract delivery schedules/response times/cost estimates/budgets.   | 0        | 1 | 2       | 3 | 4 | NA | DK |
| 2. Assess the contractor's utilization of an effective project management system that included planning, budgeting, status tracking, reporting, baseline management, critical path analysis, and work breakdown structure. | 0        | 1 | 2       | 3 | 4 | NA | DK |
| 3. Assess the contractor's demonstrated ability to create teaming/partnering relationships to achieve project goals.   | 0        | 1 | 2       | 3 | 4 | NA | DK |
| 4. Assess the contractor's ability to effectively execute the Statement of Work effectively in a consistently high quality Manner.   | 0        | 1 | 2       | 3 | 4 | NA | DK |
| 5. Assess the contractor's successfulness in recruiting and retaining strong, well-qualified key personnel.  | 0        | 1 | 2       | 3 | 4 | NA | DK |
| 6. Assess the contractor's Environmental Safety & Health (ES&H) program. (Was it in compliance with contract requirements and protective of workers, public, and the environment?)   | 0        | 1 | 2       | 3 | 4 | NA | DK |
| 7. Assess the contractor's effectiveness in subcontract management.  | 0        | 1 | 2       | 3 | 4 | NA | DK |
| 8. Assess the contractor's ability to manage human relations and labor issues effectively.   | 0        | 1 | 2       | 3 | 4 | NA | DK |
| 9. Assess the contractor's ability to effectively manage regulatory compliance programs and regulatory interfaces.   | 0        | 1 | 2       | 3 | 4 | NA | DK |
| 10. Assess the ability of the contractor's corporate office to effectively support your contract.  | 0        | 1 | 2       | 3 | 4 | NA | DK |
| 11. Assess the contractor's ability to develop and implement an effective quality assurance program.   | 0        | 1 | 2       | 3 | 4 | NA | DK |
| 12. Assess the contractor's ability to effectively implement human resource requirements and manage labor relations to minimize work disruptions.  | 0        | 1 | 2       | 3 | 4 | NA | DK |
| 13. Assess the contractor's effectiveness in working with customers, regulators, and community interests groups.   | 0        | 1 | 2       | 3 | 4 | NA | DK |
| 14. Assess the contractor's ability to meet its socio-economic program goals as set forth in a government (Federal, State, and Local) approved plan.   | 0        | 1 | 2       | 3 | 4 | NA | DK |
| 15. Provide an overall assessment of the contractor's performance.   | 0        | 1 | 2       | 3 | 4 | NA | DK |
| 16. Would you hire this Contractor?  | Yes_____ |   | No_____ |   |   |    |    |
| 17. Have you previously discussed any negative past performance information with the Contractor?   | Yes_____ |   | No_____ |   |   |    |    |

### Appendix 3

#### **PERFORMANCE GUARANTEE AGREEMENT**

For value received, and in consideration of, and in order to induce the United States (the Government) to enter into Contract No. \_\_\_\_\_ (to be determined) \_\_\_\_\_ for the management and operation of Fermi National Accelerator Laboratory (Contract dated as specified on Block 28 of SF 33), by and between the Government and \_\_\_\_\_ (Contractor), the undersigned, \_\_\_\_\_ (Guarantor), a \_\_\_\_\_ (corporation, nonprofit, etc.) \_\_\_\_\_ incorporated/established in the State of \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ hereby unconditionally guarantees to the Government (a) the full and prompt payment and performance of all obligations, accrued and executory, which Contractor presently or hereafter may have to the Government under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to the Government, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and (c) Guarantor further agrees to indemnify the Government against any losses the Government may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the Government of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by the Government of any of its rights against Guarantor hereunder.

Guarantor has read and consents to the signing of the Contract. Guarantor further agrees that Contractor shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder.

Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (iii) the assertion by the Government against Contractor of any of the Government's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in the Government's favor in law, equity, or bankruptcy.

Guarantor further agrees that its liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that the Government shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Contractor, or otherwise. Guarantor affirms that the Government shall not be required to first commence any action or obtain any judgment against Contractor before enforcing this Performance Guarantee Agreement against Guarantor, and that Guarantor will, upon demand, pay the Government any amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Contract or under any other document(s) or instrument(s) executed by Contractor as aforesaid, and that Guarantor will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.

Guarantor further warrants and represents to the Government that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantor's Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor's Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on \_\_\_\_\_ (Date).

NAME OF CORPORATION

NAME AND POSITION OF OFFICIAL EXECUTING PERFORMANCE GUARANTEE AGREEMENT ON BEHALF OF GUARANTOR

ATTESTATION INCLUDING APPLICATION OF SEAL BY AN OFFICIAL OF GUARANTOR AUTHORIZED TO AFFIX CORPORATE SEAL

## Appendix 4

### Instructions for Submitting Cost/Price Proposals for Transition Activities

This document provides instructions for preparing a contract pricing proposal for transition activities. Attachment 1 to this section contains an Excel spreadsheet (File Name: Section L Appendix 4 Attachment 1.xlsx) which shall be used to summarize and present all financial data relating to transition cost/price proposals.

Note: By submitting your proposal, you grant the Contracting Officer or an authorized representative the right to examine records that formed the basis for the pricing proposal. That examination can take place at any time before award. It may include those books, records, documents, and other types of factual information (regardless of form or whether the information is specifically referenced or included in the proposal as the basis for pricing) that will permit an adequate evaluation of the proposed price.

#### I. General Instructions

- A. You must provide the following information on the first page of your pricing proposal:
- (1) Solicitation number;
  - (2) Name and address of Offeror;
  - (3) Name, telephone number, and email address of point of contact;
  - (4) Name of cognizant Administrative Contracting Officer and the cognizant Audit Agency Office (if applicable);
  - (5) Proposed costs per category and total cost;
  - (6) Whether your organization is subject to cost accounting standards; whether your organization has submitted a CASB Disclosure Statement, and if it has been determined adequate; whether you have been notified that you are or may be in noncompliance with your Disclosure Statement or CAS, and, if yes, an explanation; whether any aspect of this proposal is inconsistent with your disclosed practices or applicable CAS, and, if so, an explanation; and whether the proposal is consistent with your established estimating and accounting principles and procedures and FAR Part 31, Cost Principles, and, if not, an explanation;
  - (7) The following statement:

This proposal reflects our estimates and/or actual costs as of this date and conforms with the instructions in FAR 15.403-5(b)(1). By submitting this proposal, we grant the Contracting Officer and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price.

- (8) Date of submission; and
  - (9) Name, title and signature of authorized representative.
- B. In submitting your proposal, you must include an index, appropriately referenced, of all the cost information accompanying or identified in the proposal. You must submit with your proposal any information reasonably required to explain your estimating process, including—
- (a) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and
  - (b) The nature and amount of any contingencies included in the proposed price.
  - (c) Furnish supporting breakdowns for each cost element, consistent with your cost accounting system.
- C. If you have reached an agreement with Government representatives on the use of forward pricing rates/factors, identify the agreement, include a copy, and describe its nature.

## II. Cost Elements

Depending on your system, you must provide breakdowns for the following basic cost elements, as applicable:

- A. **Materials and services.** Provide a consolidated priced summary of individual material quantities being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Include raw materials, parts, components, assemblies, and services to be produced or performed by others. For all items proposed, identify the item and show the source, quantity, and price. Conduct price analyses of all subcontractor proposals who are identified teaming partners. Conduct cost analyses for all these subcontracts when cost or pricing data are submitted by

the subcontractor. Include these analyses as part of your cost proposal submissions for subcontracts expected to exceed the appropriate threshold in FAR 15.403-4. Submit the subcontractor cost or pricing data as part of your own cost proposal. These requirements also apply to all subcontractors if required to submit cost or pricing data. The offeror may want to submit the subcontractor cost information separately or under a separate sealed cover.

- (1) Adequate Price Competition. Provide data showing the degree of competition and the basis for establishing the source and reasonableness of price for those acquisitions (such as subcontracts, purchase orders, material order, etc.) exceeding, or expected to exceed, the appropriate threshold set forth at FAR 15.403-4 priced on the basis of adequate price competition. For interorganizational transfers priced at other than the cost of comparable competitive commercial work of the division, subsidiary, or affiliate of the contractor, explain the pricing method (see FAR 31.205-26(e)).
  - (2) All Other. Obtain cost or pricing data from prospective sources for those acquisitions (such as subcontracts, purchase orders, material orders, etc.) exceeding the threshold set forth in FAR 15.403-4 and not otherwise exempt, in accordance with FAR 15.403-1(b) (*i.e.*, adequate price competition, commercial items, prices set by law or regulation or waiver). Also provide data showing the basis for establishing source and reasonableness of price. In addition, provide a summary of your cost analysis and a copy of cost or pricing data submitted by the prospective source in support of each subcontract, or purchase order that is the lower of either \$10,000,000 or more, or both more than the pertinent cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price. Subcontractor cost or pricing data must be accurate, complete and current as of the date of final price agreement with prime Offeror. The prime contractor is responsible for updating a prospective subcontractor's data. For standard commercial items fabricated by the Offeror that are generally stocked in inventory, provide a separate cost breakdown, if priced based on cost. For interorganizational transfers priced at cost, provide a separate breakdown of cost elements. Analyze the cost or pricing data and submit the results of your analysis of the prospective source's proposal. When submission of a prospective source's cost or pricing data is required as described in this paragraph, it must be included with your cost proposal. You must also submit any other cost or pricing data obtained from a subcontractor, either actually or by specific identification, along with the results of any analysis performed on that data.
- B. Direct Labor. Provide a monthly breakdown of labor hours, rates, and cost by appropriate category, and furnish bases for estimates.

- C. Indirect Costs. Indicate how you have computed and applied your indirect costs, including cost breakdowns. Show trends and budgetary data to provide a basis for evaluating the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation.
- D. Other Costs. List all other major costs (i.e., in excess of \$25K) not otherwise included in the categories described above and provide basis for pricing.
- E. Royalties. If royalties exceed \$250, you must provide the following information on a separate page for each separate royalty or license fee:
- (1) Name and address of licensor.
  - (2) Date of license agreement.
  - (3) Patent numbers.
  - (4) Patent application serial numbers, or other basis on which the royalty is payable.
  - (5) Brief description (including any part or model numbers of each contract item or component on which the royalty is payable).
  - (6) Percentage or dollar rate of royalty per unit.
  - (7) Unit price of contract item.
  - (8) Number of units.
  - (9) Total dollar amount of royalties.
- F. Provide the basis for any facilities and space/lease costs.



See EXCEL file Section L Appendix 4 Attachment 1.xlsx

## APPENDIX 5

### FNAL Workforce by Appointment Category

Employee Type	Full time		Part time		Total	
	Count	Sum of FTE	Count	Sum of FTE	Count	Sum of FTE
Fixed Term	165	165	15	10.4	180	175.4
On Call	0	0	64	28.8	64	28.8
Regular	1,812	1,812	37	24.5	1,849	1,836.5
Seasonal	18	18	4	2.4	22	20.4
Temporary	1	1	0	0.0	1	1.0
Total	1,996	1,996	120	66.1	2,116	2,062.1

27 joint appointees  
 126 postdoctoral researchers  
 66 undergraduate students  
 35 graduate students  
 2,123 Fermilab accelerator complex users

#### EMPLOYEE TYPES

- **Regular employees** are not in a temporary status and are regularly scheduled to work.
- **Fixed Term employees** are hired to temporarily work on short- or long-term assignments for a limited duration generally up to a maximum of three years. Term assignments may be continued for one additional extension period.
- **Seasonal employees** are hired to work generally during the summer months or holiday season to supplement the workforce. One type of seasonal employee is an **Intern employee** hired to perform work for a specific internship program, generally during the summer months.
- **Temporary employees** are hired to temporarily work for a limited duration generally up to a maximum of six months. One type of temporary employee is a **Co-op employee** hired to work three or four terms at Fermilab, alternating periods of full-time study at their schools with full-time employment at the laboratory.
- **On-call employees** are employed on an “as-needed” basis for a non-specified period. On-call employees must work less than 1,000 hours per year.

**Full-time employees** are regularly scheduled to work at least 40 hours per week.

**Part-time employees** are regularly scheduled to work less than 40 hours but at least 20 hours per week.

See EXCEL file Section L Appendix 6 Attachment 2.xlsx

Attachment 2 to this section contains an Excel spreadsheet (File Name: Section L Appendix 6 Attachment 2.xlsx) which shall be used for proposed key personnel compensation costs.

## SECTION M

### EVALUATION FACTORS FOR AWARD

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## M.1 EVALUATION OF PROPOSALS

- (a) This acquisition will be conducted using the policies and procedures in FAR Part 15, DEAR Part 915, and DEAR Subpart 970.15. A Source Evaluation Board (SEB) will evaluate proposals using the Factors in this Section M. The Source Selection Authority (SSA) will select an Offeror for contract award using the best value analysis described in this Section M.
- (b) The instructions set forth in Section L entitled “Instructions, Conditions, and Notices to Offerors” are designed to provide guidance to the Offeror concerning documentation that will be evaluated by the SEB. The Offeror shall furnish adequate and specific information in its response. A proposal shall be eliminated from further consideration before the initial ratings if the proposal is so grossly and obviously deficient as to be totally unacceptable on its face. For example, a proposal will be deemed unacceptable if it does not represent a reasonable initial effort to address the essential requirements of the solicitation, or if it clearly demonstrates that the Offeror does not understand the requirements of the solicitation. A significant deficiency or multiple deficiencies in one (1) evaluation Factor may also result in elimination of the proposal from further consideration regardless of the rating of the other Factors. In the event a proposal is rejected, a notice will be sent to the Offeror stating the reason(s) the proposal will not be considered for further evaluation under this solicitation.
- (c) The Government intends to evaluate proposals and award a contract without discussions with Offerors (except clarifications as described in FAR 15.306(a)). The Government reserves the right to conduct discussions if the Contracting Officer later determines discussions to be necessary. Any exceptions or deviations by the Offeror to the terms and conditions stated in this solicitation for inclusion in the resulting contract may make the offer unacceptable for award without discussions. If an Offeror proposes exceptions to the terms and conditions of the contract, the Government may make an award without discussions to another Offeror that did not take exception to the terms and conditions of the contract.
- (d) Prior to selection for award by the SSA, the Contracting Officer will make a finding whether any potential Organizational Conflict of Interest (OCI) exists with respect to the apparent successful Offeror or whether there is little or no likelihood that such conflict exists. In making this finding, the Contracting Officer will consider the Offeror’s representation and disclosure statement required by the contract’s Section K Clause entitled “DEAR 952.209-8 – Organizational Conflicts of Interest Disclosure-Advisory and Assistance Services”. Subparagraph (c)(1) of DEAR 952.209-8, requires a statement, if applicable, from the Offeror of any

past, present, or currently planned financial, contractual, organizational, or other interests relating to the Statement of Work. The Offeror should note that paragraph (c)(1) requires that the Offeror provide enough information in the statement to allow a meaningful evaluation by the Government of the potential effect of the interest on the performance of the Statement of Work. For any actual or significant potential organizational conflict of interest, the Offeror shall also submit a plan of actions/activities to avoid, neutralize, or mitigate such conflict. An award may be made if there is no OCI or, if any, OCI can be appropriately avoided or mitigated.

- (e) A Performance Guarantee Agreement in accordance with the requirement of the Section H Clause entitled “Separate Entity and Corporate Guarantee”, will be a condition of the award of this contract.
- (f) The Government will review all relevant past performance information submitted by the Offeror. The Government may also contact the individuals identified in the completed Section L, Appendix 1, Past Performance Information Forms. The Government may contact sources other than those identified by the Offeror. The Government may also obtain and consider relevant past performance information from available Federal Government electronic databases and data obtained or provided through other sources that the Government considers current and accurate.
- (g) Risk will be evaluated by the Government as part of the evaluation of all Factors but will not be separately evaluated as its own Factor.
- (h) The Government will not evaluate the Offeror’s answer to the hypothetical problem-solving exercise during oral presentations. The Government will however evaluate the interactions and knowledge of the Offeror’s resumé Key Personnel in their resolution of the problem during oral presentations.

## **M.2 BASIS FOR CONTRACT AWARD**

The Government intends to award one (1) contract to the responsible Offeror whose proposal is acceptable and is determined to be the best value to the Government. Selection of the best value to the Government will be achieved through a process of evaluating the strengths and weaknesses of each Offeror’s capabilities and approach proposal using the evaluation Factors described below which when combined, are significantly more important than the total evaluated price. The Government is more concerned with obtaining a superior capabilities and approach proposal than making an award at the lowest total evaluated price. However, the Government will not make an award at a total evaluated price premium it considers disproportionate to the benefits associated with the evaluated superiority of one capabilities and approach proposal over another.

Thus, to the extent that Offerors' capabilities and approach proposals are evaluated as close or similar in merit, the total evaluated price is more likely to be a determining factor.

**M.3 OVERALL RELATIVE IMPORTANCE OF CAPABILITIES AND APPROACH EVALUATION FACTORS**

The Capabilities and Approach Evaluation Factors are listed below.

<b>Capabilities and Approach Evaluation Factors</b>	
<b>Factors</b>	<b>Description</b>
A.	Science Vision and Implementation Plan
B.	Laboratory Operations
C.	Offeror Engagement
D.	Past Performance
E.	Transition Plan

Factors A and B are of equal importance to each other, and are individually of more importance than Factors C, D, and E individually. Factor C is of greater importance than Factor D. Factor D is of greater importance than Factor E. Collectively, these Capabilities and Approach Evaluation Factors are significantly more important than the total evaluated price.

**M.4 CAPABILITIES AND APPROACH EVALUATION FACTORS**

The Factors, which comprise the following "Capabilities and Approach Evaluation Factors," are not listed in order of importance. Their relative importance is reflected above in Section M Provision entitled "Overall Relative Importance of Capabilities and Approach Evaluation Factors". Each Factor will be separately rated. The individual descriptors provided below (i.e., subsections and bulletized text) are not "subfactors" as used in FAR 15.304, Evaluation Factors and Subfactors, and will not be separately rated.

- (a) Factor A: Science Vision and Implementation Plan

Science Vision

The Government shall evaluate the likelihood and degree to which the

Offeror's vision for the Laboratory will: create the conditions to enable achievement of the DOE mission, transformational and breakthrough science, and the delivery and optimization of FNAL's world class scientific facilities; enhance the Laboratory's leadership in the national and international arena for research and development; foster its central role in the international research ecosystem to deliver breakthrough science results; attract, develop and retain a highly skilled workforce; cultivate and sustain a diverse, equitable, inclusive, and accessible Laboratory culture; and, effectively coordinate scientific activities within the DOE complex, nationally, and internationally.

### Implementation Plan

The Government shall evaluate the comprehensiveness, innovativeness, efficiency, and feasibility of the Offeror's approach to implementing its Science Vision, including, but not limited to the Offeror's:

- Planned approach to enable achievement of the DOE mission and leverage programs to foster transformational and breakthrough science;
- Planned approach for bringing on-line a robust implementation of the LBNF/DUNE and PIP II projects and approach for their future operations and possible upgrades;
- Planned approach for maintaining, enhancing and developing cooperative and collaborative partnerships with universities and industry, including emerging research institutions, to enhance the Laboratory's leadership in the national and international arena for research and development;
- Planned approach for fostering the Laboratory's central role in the international research ecosystem to deliver breakthrough science results;
- Planned approach for attracting, developing, and retaining a highly skilled workforce of existing and new scientific personnel with high stature in their disciplines; plan for joint appointments (if applicable); and how the Offeror would use the resources of the Laboratory to help develop and educate the next generation of scientists and engineers;
- Planned approach for cultivating and sustaining a diverse, equitable, inclusive, and accessible Laboratory culture;



- Planned approach to support technology transfer and enhance the Strategic Partnership Projects portfolio; and
- Planned approach to leading and coordinating scientific activities at FNAL and within DOE, nationally and internationally; and the Offeror's approach to maintain engagement and positive relations and communications with DOE and other interested stakeholders.

(b) Factor B: Laboratory Operations

The Government shall evaluate the degree to which the Offeror has demonstrated a thorough understanding of Laboratory Operations necessary to successfully accomplish Sections C.4(c) and C.4(d) of the Statement of Work. In doing so, the Government's evaluation will assess the feasibility, comprehensiveness, innovativeness, and quality of the Offeror's approach for achieving excellence in all areas of operations and business management while maintaining compliance with DOE and other applicable requirements. Areas to be evaluated include:

- The Offeror's planned approach for providing integrated ES&H programs and processes that demonstrate a commitment at all levels within the Laboratory to the safety and health of workers and the public, as well as the protection and restoration of the environment. [see C.4(c)].
- The Offeror's planned approach for providing an integrated management system capable of producing implementation-level plans, programs and procedures for the management and operation of the Laboratory.
- The Offeror's planned approach for providing a robust, broad scope contractor assurance program to self-assess overall performance and drive continuous improvement of Laboratory operations and management.
- The Offeror's planned approach for providing business management systems [see Section C.4(d)(2)] that ensure efficient and effective operation, protection and maintenance of the Laboratory's assets, and ability to function as a DOE laboratory.
- The Offeror's planned approach for providing systems for the efficient and effective management of all Laboratory facilities and infrastructure, safeguards and security, cyber security, emergency operations, waste operations, sustainability, and Laboratory strategic planning.

- The Offeror's planned approach for engaging small business in meaningful contract performance, including the extent, variety, and complexity of the work to be performed.
- The Offeror's planned approach for developing and maintaining positive community relations and communications with DOE and other interested stakeholders.
- The Offeror's planned approach for advancing diversity, equity, inclusion and accessibility at the Laboratory.
- The Offeror's planned approach for delivering the Laboratory's project portfolio.

(c) Factor C: Offeror Engagement

Key Personnel

The Offeror's résuméd Key Personnel (Laboratory Director, Chief Operating Officer, and Chief Research Officer) will be evaluated for the extent of their qualifications and experience with respect to the functions they are proposed to manage. The Government shall evaluate the Offeror's Laboratory Director and other résuméd Key Personnel, including: how their credentials, technical and leadership capabilities, and relevant experience, including currency and depth and past performance, bring value to managing the Laboratory and interacting with DOE; their understanding of their roles, responsibilities, and authorities in the Laboratory's overall management structure, and of the need to collaborate internally; their understanding and approach for resolving scientific and business management barriers affecting accomplishment of the work, including consistency of their understanding and approach with the written materials submitted; their ability to effectively communicate and cooperate with DOE and each other in order to enhance the successful conduct of the scientific mission and achieve excellence in operations and business management; and their understanding of DOE. The evaluation will include a review of the consistency between the oral presentations and the written materials submitted.

The Laboratory Director and other résuméd Key Personnel will be evaluated based on the submitted resumes, oral presentations, and their participation in the problem-solving exercise. The Government may also evaluate the Laboratory Director and other résuméd Key Personnel based on reference checks and any information received from other references or third parties. Failure to submit required letters of commitment will result in the Laboratory Director and other résuméd Key Personnel not being evaluated, negatively affecting the evaluation results for this Factor.

### Organizational Structure

The Government shall evaluate how the organization and leadership structure will enhance the conduct of the scientific mission, achieve excellence in operations and business management, and effectively implement the Offeror's proposed vision for the Laboratory. The Government shall evaluate the clarity of roles, responsibilities, authorities, and decision making in the Laboratory's overall management structure. The Government shall evaluate how the units work together. The Government shall evaluate the organizational approach for resolving scientific and business management barriers affecting accomplishment of the work. The Government shall evaluate how the Offeror's overall management and governance approach enhances its ability to effectively communicate, cooperate, and partner with DOE.

### Governance Approach and Corporate Assurance

The Government shall evaluate the comprehensiveness, innovativeness, efficiency, and feasibility of the Offeror's approach for providing governance and corporate assurance. The Government shall evaluate the credibility and benefit of the value added by the parent organization(s) in achieving world-class excellence in research, user facility operations, and operations and business management.

### Offeror's Commitments

The Government shall evaluate the credibility, liability to the Government, Governmental action required, and expected benefit of the Offeror's proposed commitments as defined in Section L Provision entitled "Offeror Engagement", if any, to FNAL. Offerors shall only receive credit in the evaluation for commitments that will be incorporated into the contract. No credit in the evaluation will be given for commitment(s) developed and/or funded by the United States Government unless the Offeror has exclusive rights and control of the commitment(s).

(d) Factor D: Past Performance

The Government shall evaluate and assess the Offeror's past performance on recent and relevant contracts, as the terms are defined in Section L Provision entitled "Past Performance", as well as other relevant past performance information submitted by the Offeror or that the Government obtained from other sources, to determine the degree to which the Offeror's past performance demonstrates its ability to successfully perform the proposed contractual requirements. In conducting the past performance evaluation, the Government may use

and consider data provided by the Offeror and data obtained or provided through other sources that the Government considers current and accurate, including the CPARS (<http://www.cpars.gov/>). Per FAR 15.305(a)(2)(iv), if the Offeror does not have a record of recent and relevant past performance information on contracts similar to the Statement of Work or past performance information is otherwise not available, the Offeror will not be evaluated favorably or unfavorably for past performance.

(e) Factor E: Transition Plan

The Government shall evaluate the Offeror's transition plan for the work and the workforce from the beginning of the transition period until assumption of contract responsibilities. The transition plan shall be evaluated with respect to its feasibility, comprehensiveness, efficiency, and effectiveness, including the extent to which it provides a smooth and orderly transition to the proposed approach, identifies key issues and milestones, identifies potential barriers to a smooth transition, proposes solutions to the barriers identified and minimizes impact on continuity of operations.

## M.5 COST EVALUATION FACTORS

Cost proposals will be evaluated for price reasonableness and cost realism in accordance with FAR 15.404. **Given the nature of performance-based management and operating contracts, Offerors will not be required to provide, nor will the Government determine, an estimate of overall contract costs.** The cost evaluation, however, will include consideration of the Offeror's proposed transition costs and the résuméd Key Personnel's total compensation costs for the first two (2) years (January 1, 2025 through December 31, 2026) after completion of the transition period, which ends December 31, 2024. The Government will determine the probable cost of both of the above. Additionally, the total amount of the performance fee proposed in Section B Clause entitled "Performance Fee" for the first five (5) years of the contract will also be considered as part of the best value determination.

In summary, for purposes of determining the best value, the total evaluated price will be the total amount of the proposed performance fee for the five (5) year base period, along with the probable cost for transition, and the probable cost for the résuméd Key Personnel's total compensation costs for the first two (2) years (January 1, 2025 through December 31, 2026) after completion of the transition period, which ends December 31, 2024.