

PART II – CONTRACT CLAUSES

SECTION I - CONTRACT CLAUSES

I.1 FAR 52.252-2, CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

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

<http://www.arnet.gov/far/>

<http://professionals.pr.doe.gov/>

CLAUSES INCORPORATED BY REFERENCE

Clause No.	FAR/DEAR Reference	Title	Fill-In Information (see FAR 52.104(d))
I.2	FAR 52.202-1	Definitions (JUL 2004) as modified by DEAR 952.202-1 (MAR 2002)	None
I.3	FAR 52.203-3	Gratuities (APR 1984)	None
I.4	FAR 52.203-5	Covenant Against Contingent Fees (APR 1984)	None
I.5	FAR 52.203-6	Restrictions on Subcontractor Sales to the Government (SEP 2006)	None
I.6	FAR 52.203-7	Anti-Kickback Procedures (OCT 2010)	None
I.7	FAR 52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997)	None
I.8	FAR 52.203-10	Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997)	None
I.9	FAR 52.203-12	Limitations on Payments to Influence Certain Federal Transactions (OCT 2010)	None
I.10	FAR 52.203-13	Contractor Code Of Business Ethics And Conduct (APR 2010)	None
I.11	FAR 52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (MAY 2011)	None
I.12	FAR 52.204-7	Central Contractor Registration (APR 2008)	None
I.13	FAR 52.204-9	Personal Identity Verification of Contractor Personnel (JAN 2011)	None
I.14	FAR 52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2010)	None
I.15	FAR 52.209-6	Protecting the Government’s Interest when Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment (DEC 2010)	None
I.16	FAR 52.215-2	Audit and Records – Negotiation (OCT 2010)	None
I.17	FAR 52.215-8	Order of Precedence – Uniform Contract Format (OCT 1997)	None

Clause No.	FAR/DEAR Reference	Title	Fill-In Information (see FAR 52.104(d))
I.18	FAR 52.215-11	Price Reduction for Defective Certified Cost or Pricing Data – Modifications (OCT 2010)	None
I.19	FAR 52.215-13	Subcontractor Cost or Pricing Data – Modifications (OCT 2010)	None
I.20	FAR 52.215-15	Pension Adjustments and Asset Reversions (OCT 2010)	None
I.21	FAR 52.215-17	Waiver of Facilities Capital Cost of Money (OCT 1997)	None
I.22	FAR 52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (JUL 2005)	None
I.23	FAR 52.215-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data – Modifications (OCT 2010)	None
I.24	FAR 52.219-4	Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JAN 2011)	(c) N/A
I.25	FAR 52.219-8	Utilization of Small Business Concerns (JAN 2011)	None
I.26	FAR 52.219-9	Small Business Subcontracting Plan (JAN 2011) – Alternate II (OCT 2001)	None
I.27	FAR 52.219-16	Liquidated Damages – Subcontracting Plan (JAN 1999)	None
I.28	FAR 52.219-25	Small Disadvantaged Business Participation Program – Disadvantaged Status and Reporting (DEC 2010)	None
I.29	FAR 52.219-28	Post-Award Small Business Program Representation (APR 2009)	(g) N/A
I.30	FAR 52.222-1	Notice to the Government of Labor Disputes (FEB 1997)	None
I.31	FAR 52.222-2	Payment for Overtime Premiums (JUL 1990)	(a) the percentage specified in the Section H clause entitled “Overtime Control Plan”.
I.32	FAR 52.222-3	Convict Labor (JUN 2003)	None
I.33	FAR 52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation (JUL 2005)	None
I.34	FAR 52.222-6	Davis-Bacon Act (JUL 2005)	None
I.35	FAR 52.222-7	Withholding of Funds (FEB 1988)	None
I.36	FAR 52.222-8	Payrolls and Basic Records (JUN 2010)	None
I.37	FAR 52.222-9	Apprentices and Trainees (JUL 2005)	None
I.38	FAR 52.222-10	Compliance with Copeland Act Requirements (FEB 1988)	None
I.39	FAR 52.222-11	Subcontracts (Labor Standards) (JUL 2005)	None
I.40	FAR 52.222-12	Contract Termination – Debarment (FEB 1988)	None
I.41	FAR 52.222-13	Compliance with Davis-Bacon and Related Act Regulations (FEB 1988)	None
I.42	FAR 52.222-14	Disputes Concerning Labor Standards (FEB 1988)	None
I.43	FAR 52.222-15	Certification of Eligibility (FEB 1988)	None
I.44	FAR 52.222-16	Approval of Wage Rates (FEB 1988)	None
I.45	FAR 52.222-21	Prohibition of Segregated Facilities (FEB 1999)	None
I.46	FAR 52.222-26	Equal Opportunity (MAR 2007)	None

Clause No.	FAR/DEAR Reference	Title	Fill-In Information (see FAR 52.104(d))
I.47	FAR 52.222-27	Affirmative Action Compliance Requirements for Construction (FEB 1999)	None
I.48	FAR 52.222-30	Davis-Bacon Act—Price Adjustment (None or Separately Specified Method) (DEC 2001)	None
I.49	FAR 52.222-35	Equal Opportunity for Veterans (SEP 2010)	None
I.50	FAR 52.222-36	Affirmative Action for Workers with Disabilities (OCT 2010)	None
I.51	FAR 52.222-37	Employment Reports Veterans (SEP 2010)	None
I.52	FAR 52.222-41	Service Contract Act of 1965, As Amended (NOV 2007)	None
I.53	FAR 52.222-50	Combating Trafficking in Persons (FEB 2009)	None
I.54	FAR 52.222-54	Employment Eligibility Verification (JAN 2009)	
I.55	FAR 52.223-3	Hazardous Material Identification and Material Safety Data (Jan 1997) – Alternate I (JUL 1995)	(b) To be furnished prior to the delivery of applicable materials
I.56	FAR 52.223-6	Drug Free Workplace (MAY 2001)	None
I.57		DELETED	
I.58	FAR 52.223-12	Refrigeration Equipment and Air Conditioners (MAY 1995)	None
I.59		Reserved	
I.60	FAR 52.224-1	Privacy Act Notification (APR 1984)	None
I.61	FAR 52.224-2	Privacy Act (APR 1984)	None
I.62	FAR 52.225-1	Buy American Act – Supplies (FEB 2009)	None
I.63	FAR 52.225-13	Restrictions on Certain Foreign Purchases (JUN 2008)	None
I.64	FAR 52.227-1	Authorization and Consent (DEC 2007)	None
I.65	FAR 52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (DEC 2007)	None
I.66	FAR 52.227-3	Patent Indemnity (APR 1984)	None
I.67	FAR 52.228-7	Insurance – Liability to Third Persons (MAR 1996)	None
I.68	FAR 52.230-2	Cost Accounting Standards (OCT 2010)	None
I.69	FAR 52.230-6	Administration of Cost Accounting Standards (JUN 2010)	None
I.70	FAR 52.232-9	Limitation on Withholding of Payments (APR 1984)	None
I.71	FAR 52.232-17	Interest (OCT 2010)	None
I.72	FAR 52.232-22	Limitation of Funds (APR 1984)	None
I.73	FAR 52.232-23	Assignment of Claims (JAN 1986)	None
I.74	FAR 52.232-25	Prompt Payment (OCT 2008) – Alternate I (FEB 2002)	None
I.75	FAR 52.232-33	Payment of Electronic Funds Transfer – Central Contractor Registration (OCT 2003)	None
I.76	FAR 52.233-1	Disputes (JUL 2002) – Alternate I (DEC 1991)	None
I.77	FAR 52.233-3	Protest After Award (AUG 1996) – Alternate I (JUN 1985)	None
I.78	FAR 52.233-4	Applicable Law for Breach of Contract Claim (OCT 2004)	None
I.79	FAR 52.234-4	Earned Value Management System (JUL 2006)	(g) American DND
I.80	FAR 52.237-2	Protection of Government Buildings, Equipment, and Vegetation (APR 1984)	None

Clause No.	FAR/DEAR Reference	Title	Fill-In Information (see FAR 52.104(d))
I.81	FAR 52.237-3	Continuity of Services (JAN 1991)	None
I.82	FAR 52.239-1	Privacy or Security Safeguards (AUG 1996)	None
I.83	FAR 52.242-1	Notice of Intent to Disallow Costs (APR 1984)	None
I.84	FAR 52.242-3	Penalties for Unallowable Costs (MAR 2001)	None
I.85	FAR 52.242-4	Certification of Final Indirect Costs (JAN 1997)	None
I.86	FAR 52.242-13	Bankruptcy (JUL 1995)	None
I.87	FAR 52.243-2	Changes – Cost Reimbursement (AUG 1987) – Alternate I (APR 1984)	None
I.88	FAR 52.243-6	Change Order Accounting (APR 1984)	None
I.89	FAR 52.243-7	Notification of Changes (APR 1984)	(b) 10 (d) 30
I.90	FAR 52.244-2	Subcontracts (OCT 2010) – Alternate I (JUN 2007)	(d) American DND, (j) none
I.91	FAR 52.244-5	Competition in Subcontracting (DEC 1996)	None
I.92	FAR 52.244-6	Subcontracts for Commercial Items (DEC 2010)	None
I.93	FAR 52.245-1	Government Property (AUG 2010)	None
I.94	FAR 52.245-9	Use and Charges (AUG 2010)	None
I.95	FAR 52.246-25	Limitation of Liability – Services (FEB 1997)	None
I.96	FAR 52.247-68	Report of Shipment (REPSHIP) (FEB 2006)	None
I.97	FAR 52.248-1	Value Engineering (OCT 2010)	(m) DE-EM0001529
I.98	FAR 52.249-6	Termination (Cost Reimbursement) (MAY 2004)	None
I.99	FAR 52.249-14	Excusable Delays (APR 1984)	None
I.100	FAR 52.251-1	Government Supply Sources (AUG 2010)	None
I.101	FAR 52.251-2	Interagency Fleet Management System Vehicles and Related Services (JAN 1991)	None
I.102	FAR 52.253-1	Computer Generated Forms (JAN 1991)	None
I.103	DEAR 952.203-70	Whistleblower Protection for Contractor Employees (DEC 2000)	None
I.104	DEAR 952.204-2	Security Requirements (MAR 2011)	None
I.105	DEAR 952.204-70	Classification/Declassification (SEP 1997)	None
I.106	DEAR 952.204-75	Public Affairs (DEC 2000)	None
I.107	DEAR 952.204-77	Computer Security (AUG 2006)	None
I.108	DEAR 952.208-7	Tagging of Leased Vehicles (APR 1984)	None
I.109	DEAR 952.208-70	Printing (APR 1984)	None
I.110	DEAR 952.209-72	Organizational Conflicts of Interest (AUG 2009)	None
I.111	DEAR 952.215-70	Key Personnel (DEC 2000)	None
I.112	FAR 52.216-7/ DEAR 952.216-7	Allowable Cost and Payment (DEC 2002)	(a) (3) 15 th
I.113	DEAR 952.223-75	Preservation of Individual Occupational Radiation Exposure Records (APR 1984)	None

Clause No.	FAR/DEAR Reference	Title	Fill-In Information (see FAR 52.104(d))
I.114	DEAR 952.223-76	Conditional Payment of Fee or Profit – Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health (DEC 2010)	None
I.115	DEAR 952.227-11	Patent Rights-Retention by the Contractor (Short Form) (FEB 1995)	None
I.116	DEAR 952.227-13	Patent Rights-Acquisition by the Government (SEP 1997)	None
I.117	DEAR 952.227-84	Right to Request Patent Waiver (FEB 1998)	None
I.118	DEAR 952.231-71	Insurance -- Litigation and Claims (AUG 2009)	None
I.119	DEAR 952.247-70	Foreign Travel (JUN 2010)	None
I.120	DEAR 952.250-70	DELETED & Replaced with Attachment 1 – Model Clause, Implementing The Price-Anderson Amendments Act of 2005 – Nuclear Hazards Indemnity Agreement	None
I.121	DEAR 952.251-70	Contractor Employee Travel Discounts (AUG 2009)	None
I.122	DEAR 970.5203-2	Performance Improvement and Collaboration (MAY 2006)	None
I.123	DEAR 970.5204-1	Counterintelligence (DEC 2010)	None
I.124	DEAR 970.5204-2	Laws, Regulations, and DOE Directives (DEC 2000)	None
I.125	DEAR 970.5223-1	Integration of Environment, Safety, and Health Into Work Planning and Execution (DEC 2000)	None
I.126	DEAR 970.5223-4	Workplace Substance Abuse Programs at DOE Sites (DEC 2010)	None
I.127	DEAR 970.5227-1	Rights in Data – Facilities- (DEC 2000)	None
I.128	DEAR 970.5227-4	Authorization and Consent (AUG 2002)	None
I.129	DEAR 970.5229-1	State and Local Taxes (DEC 2000)	None
I.130	DEAR 970.5232-5.	Liability with Respect to Cost Accounting Standards (DEC 2000)	None
I.131		DELETED	
I.153	FAR 52.223-2	Affirmative Procurement of Biobased Products Under Service and Construction Contracts	None
I.154	FAR 52.223-15	Energy Efficiency in Energy-Consuming Products	None
I.155	FAR 52.233-16	IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products	None
I.156	FAR 52.223-17	Affirmative Procurement of EPA-designated Items in Service and Construction Contracts	None
I.157	DEAR 952.223-78	Sustainable Acquisition Program	None
I.158	FAR 52.232-40	Providing Accelerated Payments to Small Business Subcontractors (Dec 2013)	
I.159	FAR 52.204-14	Service Contract Reporting Requirements	

CLAUSES INCORPORATED IN FULL TEXT

I.132 FAR 52.215-19, NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

(a) The Contractor shall make the following notifications in writing:

- (1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.
 - (2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- (b) The Contractor shall—
- (1) Maintain current, accurate, and complete inventory records of assets and their costs;
 - (2) Provide the ACO or designated representative ready access to the records upon request;
 - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and
 - (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.
- (c) The Contractor shall include the substance of this clause in all subcontracts under this Contract that meet the applicability requirement of FAR 15.408(k).

I.133 FAR 52.222-42, STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

This Statement is for Information Only: It is not a Wage Determination

Salaried Employee Class	Monetary Wage—Fringe Benefits
Accounting Clerk I	15.74
Accounting Clerk II	16.37

Computer Systems Analyst I	29.39
Computer Systems Analyst II	31.93
Data Entry Operator I	14.72
Data Entry Operator II	15.74
Engineering Technician III	18.88
Engineering Technician IV	22.55
Environmental Technician II	18.88
Environmental Technician III	22.55
General Clerk I	14.72
General Clerk II	15.74
Information Management Technician	20.64
Lean Mailroom Supply Specialist	18.88
Maintenance Scheduler	16.37
Nursing Assistant III	15.74
Procurement Technician II	16.37
Procurement Technician III	18.88
QA Specialist	18.88
QA Technician	18.88
QA/QC Engineer	20.64
Quality Control Inspector	16.37
Rad Control Engineer III	20.59
Rad Control Engineer IV	24.67
Rad Control Technician III	18.88
Radiochemistry Technician	20.64
Radiological Technologist	20.64
Regulatory Specialist	18.88
Safety Technician Specialist	18.88
Secretary I	16.37
Secretary II	18.88
Security Officer	20.64
Technical Instructor	22.55
Technical Instructor/Course Developer	26.80

Hourly Employee Class

**Monetary Wage—Fringe
Benefits**

Electrician	29.25
Heavy Equipment Mechanic	29.25

Heavy Equipment Operator	29.25
HVAC Technician	29.25
Instrument Mechanic	29.25
Janitor	20.69
Laborer	20.69
Laborer, Grounds Maintenance	22.04
Millwright	29.25
Motor Vehicle Mechanic	29.25
Pipefitter	29.25
Plumber	28.44
Rigger	29.25
Shipping/Receiving Clerk	23.41
Truck Driver - Light	25.72
Truck Driver - Medium	26.67
Warehouse Specialist	24.74
Water Treatment Plant Operator	28.44
Welder	29.25

I.134 FAR 52.223-5, POLLUTION PREVENTION AND RIGHT TO KNOW INFORMATION (MAY 2011)

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

“Toxic chemical” means a chemical or chemical category listed in 40 CFR 372.65.

(b) Federal facilities are required to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050), and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

(1) The emergency planning reporting requirements of Section 302 of EPCRA.

(2) The emergency notice requirements of Section 304 of EPCRA.

(3) The list of Material Safety Data Sheets, required by Section 311 of EPCRA.

(4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA.

(5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA.

(6) The toxic chemical and hazardous substance release and use reduction goals of section 2(e) of Executive Order 13423 and of Executive Order 13514.

I.135 FAR 52.223-9, ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED PRODUCTS (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 the Contracting Officer.

I.136 FAR 52.223-10, WASTE REDUCTION PROGRAM (MAY 2011)

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

“Recycling” means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

“Waste prevention” means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

“Waste reduction” means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of section 3(e) of Executive Order 13423, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor’s programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, *et seq.*) and implementing regulations (40 CFR Part 247).

I.137 FAR 52.223-11, OZONE-DEPLETING SUBSTANCES (MAY 2001)

(a) Definition. “Ozone-depleting substance,” as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

- (b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

WARNING: Contains (or manufactured with, if applicable) * _____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

I.138 FAR 52.225-11, BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (SEP 2010)

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

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

“Commercially available off-the-shelf (COTS) item”—

- (1) Means any item of supply (including construction material) that is—
(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
(ii) Sold in substantial quantities in the commercial marketplace; and
(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or 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.

“Designated country” means any of the following countries:

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

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

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States;
- (2) A construction material manufactured in the United States, if—
 - (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of

foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or
(ii) The construction material is a COTS item.

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

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

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

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

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

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

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

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

(b) Construction materials.

(1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for construction material that is a COTS item (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated county construction materials.

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

(3) The requirement in paragraph (b)(2) of this clause does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows: none

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act.

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

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

Foreign and Domestic Construction Materials Price Comparison			
Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign construction material
Domestic construction material
Item 2:			
Foreign construction material
Domestic construction material

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

[Include other applicable supporting information.]

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

I.139 FAR 52.227-23, RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)

Except for data contained on pages IN Volume II in its entirety, 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 December 28, 2010, upon which this contract is based.

I.140 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. DE-EM0001529. This may be confirmed by contacting the Contract Administration Office specified in the Section G Clause entitled, Contract Administration.

I.141 FAR 52.247-67, SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (FEB 2006)

- (a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid—
 - (1) By the Contractor under a cost-reimbursement contract; and
 - (2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.
- (b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding \$100. Bills under \$100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.
- (c) Contractors shall submit the above referenced transportation documents to the following addresses —

Environmental Management Consolidated Business Center
250 East Fifth Street, Suite 500
Cincinnati, Ohio 45202

I.142 FAR 52.252-6, AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the date of the clause.

- (b) The use in this solicitation or contract of any Department of Energy Acquisition Regulation (48 CFR Chapter 9) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

I.143 DEAR 952.226-74, DISPLACED EMPLOYEE HIRING PREFERENCE (JUNE 1997)

- (a) Definition.

Eligible employee means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its contractors with respect to work under its contract with the Department at the time the particular position is available.

- (b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.
- (c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

I.144 DEAR 952.227-82, RIGHTS TO PROPOSAL DATA (APR 1994)

Except for technical data contained on pages in Volume II in its entirety of the contractor's proposal dated December 28, 2010 which are asserted by the contractor as being proprietary data, it is agreed that, as a condition of the award of this contract, and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.

I.145 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."

I.146 DEAR 970.5204-3, ACCESS TO AND OWNERSHIP OF RECORDS (JUL 2005)

(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 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 the contract.

(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 for those records described by the contract as being maintained in Privacy Act systems of records. [70 FR 37010 Jun. 28, 2005]

(2) Confidential contractor financial information, 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, Accounts, Records, and Inspection, 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. In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor contractors. Upon delivery, title to such records shall

vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(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. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.

(f) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the Contractor. In addition, the Contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.

(g) Subcontracts. The Contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:

(1) The value of the subcontract is greater than \$2 million (unless specifically waived by the Contracting Officer);

(2) The Contracting Officer determines that the subcontract is, or involves, a critical task related to the contract; or

(3) The subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

I.147 RESERVED

I.148 RESERVED

I.149 DEAR 970.5226-3, COMMUNITY COMMITMENT (DEC 2000)

It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. The basic elements of this policy include: (1) Recognizing the diverse interests of the region and its stakeholders, (2) engaging regional stakeholders in issues and concerns of mutual interest, and (3) recognizing that giving back to the community is a worthwhile business practice. Accordingly, the Contractor agrees that its business operations and performance

under the Contract will be consistent with the intent of the policy and elements set forth above.

I.150 DEAR 970.5231-4, PREEXISTING CONDITIONS (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 August 29, 2011. 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 August 29, 2011, 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.

I.151 DEAR 970.5226-1, DIVERSITY PLAN (DEC 2000)

The Contractor shall submit a Diversity Plan to the Contracting Officer for approval within 90 days after the effective date of this contract (or contract modification, if appropriate). The Contractor shall submit an update to its Plan annually or with its annual fee proposal. Guidance for preparation of a Diversity Plan is provided in the Appendix. The Plan shall include innovative strategies for increasing opportunities to fully use the talents and capabilities of a diverse work force. The Plan shall address, at a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force, (2) educational outreach, (3) community involvement and outreach, (4) subcontracting, (5) economic development (including technology transfer), and (6) the prevention of profiling based on race or national origin.

I.152 FAR 52.216-24, LIMITATION OF GOVERNMENT LIABILITY (1984)

(a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding \$4,700,000.00 dollars.

(b) The maximum amount for which the Government shall be liable if this contract is terminated is \$4,700,000.00 dollars.

I.153 FAR 52.223-2, AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS

(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 2902.10 *et seq.*). For example, some USDA-designated items such as mobile equipment hydraulic fluids, diesel fuel additives, and penetrating lubricants are excluded from the preferred procurement requirement for the application of the USDA-designated item to one or both of 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.usda.gov/biopreferred>.

I.154 FAR 52.223-15, ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS

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

“Energy-efficient product”—

(1) Means a product that—

(i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

(ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy’s Federal Energy Management Program.

(2) The term “product” does not include any energy-consuming product or system designed or procured for combat or combat-related missions ([42 U.S.C. 8259b](#)).

(b) The Contractor shall ensure that energy-consuming products are energy efficient products (*i.e.*, ENERGY STAR® products or FEMP-designated products) at the time of contract award, for products that are—

(1) Delivered;

- (2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;
 - (3) Furnished by the Contractor for use by the Government; or
 - (4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.
- (c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless—
- (1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or
 - (2) Otherwise approved in writing by the Contracting Officer.
- (d) Information about these products is available for—
- (1) ENERGY STAR® at <http://www.energystar.gov/products>; and
 - (2) FEMP at http://www1.eere.energy.gov/femp/procurement/eep_requirements.html.

I.155 FAR 52.223-16, IEEE 1680 STANDARD FOR THE ENVIRONMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS

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

“Computer monitor” means a video display unit used with a computer.

“Desktop computer” means a computer designed for use on a desk or table.

“Notebook computer” means a portable-style or laptop-style computer system.

“Personal computer product” means a notebook computer, a desktop computer, or a computer monitor, and any peripheral equipment that is integral to the operation of such items. For example, the desktop computer together with the keyboard, the mouse, and the power cord would be a personal computer product. Printers, copiers, and fax machines are not included in peripheral equipment, as used in this definition.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were EPEAT Bronze registered or higher. Bronze is the first level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

(c) For information about the standard, see www.epeat.net.

I.156 FAR 52.223-17, AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS

(a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- (1) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (2) Meeting contract performance requirements; or
- (3) At a reasonable price.

(b) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designated items is available at <http://www.epa.gov/cpg/products.htm>.

I.157 DEAR 952.223-78, SUSTAINABLE ACQUISITION PROGRAM

(a) Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, the Department of Energy (DOE) is committed to managing its facilities in an environmentally preferable and sustainable manner that will promote the natural environment and protect the health and well being of its Federal employees and contractor service providers. In the performance of work under this contract, the Contractor shall provide its services in a manner that promotes the natural environment, reduces greenhouse gas emissions and protects the health and well being of Federal employees, contract service providers and visitors using the facility.

(b) Green purchasing or sustainable acquisition has several interacting initiatives. The Contractor must comply with initiatives that are current as of the contract award date. DOE may require compliance with revised initiatives from time to time. The Contractor may request an equitable adjustment to the terms of its contract using the procedures at 48 CFR 970.5243–1 Changes. The initiatives important to these Orders are explained on the following Government or Industry Internet Sites:

- (1) Recycled Content Products are described at <http://epa.gov/cpg>.
- (2) Biobased Products are described at <http://www.biopreferred.gov/>.
- (3) Energy efficient products are at <http://energystar.gov/products> for Energy Star products.
- (4) Energy efficient products are at <http://www.femp.energy.gov/procurement> for FEMP designated products.
- (5) Environmentally preferable and energy efficient electronics including desktop computers, laptops and monitors are at <http://www.epeat.net> the

Electronic Products Environmental Assessment Tool (EPEAT) the Green Electronics Council site.

(6) Green house gas emission inventories are required, including Scope 3 emissions which include contractor emissions. These are discussed at Section 13 of Executive Order 13514 which can be found at <http://www.archives.gov/federal-register/executive-orders/disposition.html>.

(7) Non-Ozone Depleting Alternative Products are at <http://www.epa.gov/ozone/strathome.html>.

(8) Water efficient plumbing products are at <http://epa.gov/watersense>.

(c) The clauses at FAR 52.223–2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223–15, Energy Efficiency in Energy Consuming Products, and 52.223–17 Affirmative Procurement of EPA–Designated Items in Service and Construction Contracts, require the use of products that have biobased content, are energy efficient, or have recycled content. To the extent that the services provided by the Contractor require provision of any of the above types of products, the Contractor must provide the energy efficient and environmentally sustainable type of product unless that type of product—

(1) Is not available;

(2) Is not life cycle cost effective (or does not exceed 110% of the price of alternative items if life cycle cost data is unavailable), EPEAT is an example of lifecycle costs that have been analyzed by DOE and found to be acceptable at the silver and gold level;

(3) Does not meet performance needs; or,

(4) Cannot be delivered in time to meet a critical need.

(d) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management,

(<http://www.epa.gov/greeningepa/practices/eo13423.htm>) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (<http://www.archives.gov/federal-register/executive-orders/disposition.html>). The Contractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, *Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic Performance*. This guide includes information concerning recycled content products, biobased products, energy efficient products, water efficient products, alternative fuels and vehicles, non ozone depleting substances and other environmentally preferable products and services. This guide is available on the Internet at: <http://management.energy.gov/documents/AcqGuide23pt0Rev1.pdf>.

(e) Contractors must establish and maintain a documented energy management program which includes requirements for energy and water efficient equipment, EnergyStar or WaterSense, as applicable and procedures for verification of purchases, following the criteria in DOE Order 430.2B, Departmental Energy, Renewable Energy, and Transportation Management, Attachment 1, or its successor. This requirement should not be flowed down to subcontractors.

(f) In complying with the requirements of paragraph (c) of this clause, the Contractor shall coordinate its activities with and submit required reports through the Environmental Sustainability Coordinator or equivalent position.

(g) The Contractor shall prepare and submit performance reports using prescribed DOE formats, at the end of the Federal fiscal year, on matters related to the acquisition of environmentally preferable and sustainable products and services. This is a material delivery under the contract. Failure to perform this requirement may be considered a failure that endangers performance of this contract and may result in termination for default [see FAR 52.249–6, Termination (Cost Reimbursement)].

(h) These provisions shall be flowed down only to first tier subcontracts exceeding the simplified acquisition threshold that support operation of the DOE facility and offer significant subcontracting opportunities for energy efficient or environmentally sustainable products or services. The Subcontractor will comply with the procedures in paragraphs (c) through (f) of this clause regarding the collection of all data necessary to generate the reports required under paragraphs (c) through (f) of this clause, and submit the reports directly to the Prime Contractor's Environmental Sustainability Coordinator at the supported facility. The Subcontractor will advise the Contractor if it is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in paragraph (c) of this clause apply. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the Subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties. Failure to comply with these reporting requirements may be considered a breach of contract with attendant consequences.

(i) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "Subcontractor."

(End of Clause)

Alternate I for Construction Contracts and Subcontracts (OCT 2010)—When contracting for construction, alteration, or renovation of DOE facilities, substitute the following paragraphs (d) through (i):

(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>. When developing the Bill of Materials for approval of the Contracting Officer or Representative, the contractor shall specify energy efficient and environmentally sustainable materials to the extent possible within the constraints of the general design specifications. Compliance with the *Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings* (Guiding Principles) shall be achieved through certification to the Leadership in Energy and Environmental Design (LEED) Gold level under the LEED rating system most suited to the building type.

(e) [Reserved]

(f) In complying with the requirements of paragraph (c) of this clause, the Contractor(s) 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 energy efficient and environmentally 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 48 CFR 52.249-6, Termination (Cost Reimbursement).

(h) These provisions shall be flowed down only to first tier construction subcontracts exceeding the simplified acquisition threshold that support operation of the DOE facility and offer significant opportunities for designating energy efficient or environmentally sustainable products or services in the materials selection process. The subcontractor will comply with the procedures in paragraphs (c) through (f) of this clause regarding the collection of all data necessary to generate the reports required under paragraphs (c) through (f) of this clause, and submit the reports directly to the Prime Contractor's Environmental Sustainability Coordinator at the supported facility. The subcontractor will advise the contractor if it is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in paragraph (c) of this clause apply. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties. Failure to comply with these reporting requirements may be considered a breach of contract with attendant consequences.

(i) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "Subcontractor."

I.158 FAR 52.232-40, PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013)

- (a) Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.
- (b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act
- (c) Include the substance of this clause, including this paragraph ©, in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

ATTACHMENT 1 – MODEL CLAUSE, IMPLEMENTING THE PRICE-ANDERSON AMENDMENTS ACT OF 2005.

NUCLEAR HAZARDS INDEMNITY AGREEMENT

- (a) Authority. This clause is incorporated into this contract pursuant to the authority contained in subsection 170d of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- (b) Definitions. The definitions set out in the Act shall apply to this clause.
- (c) Financial protection. Except as hereafter permitted or required in writing by DOE, the contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the contractor by DOE.
- (d) (1) Indemnification. To the extent that the contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170d. of the

Act, as that amount may be increased in accordance with section 170t., in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$500 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e) (1) Waiver of Defenses. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.

(2) In the event of an extraordinary nuclear occurrence which:

(i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

(ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or

(iii) Arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or

(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the contractor, on behalf of itself and other persons indemnified, agrees to waive:

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:

1. Negligence;

2. Contributory negligence;
3. Assumption of risk; or
4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

(B) Any issue or defense as to charitable or governmental immunity;
and

(C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR Part 840.

(vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the contractor is engaged in the performance of contractual activity under this contract.

(3) The waivers set forth above:

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

- (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
 - (iv) Shall not apply 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 not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) Notification and litigation of claims. The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- (g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligation

under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.

- (h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Accounts, records, and inspection, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) Civil penalties. The contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders. If the contractor is a not-for-profit contractor, as defined by section 234Ad.(2), the total amount of civil penalties paid shall not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under this contract.
- (j) Criminal penalties. Any individual director, officer, or employee of the contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to section 223 (c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) Inclusion in subcontracts. The contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

Effective date

() See Note I below for instructions related to this section on Effective Date.

Relationship to general indemnity

() See Note I below for instructions related to this section on Relationship to General Indemnity.

(End of Clause)

Note I

(a) For contracts with an award date after the effective date of Acquisition Letter 2012-10, August, 16 2012, do not include an effective date provision.

(b) For contracts with an award date before the effective date of Acquisition Letter 2012-10, August, 16 2012:

(i) If the contract contains the Nuclear Hazards Indemnity Agreement clause, dated June 1996 or prior revision, replace the clause at DEAR 952.250-70 with this model clause and use the EFFECTIVE DATE title and language, as follows:

“(1) Effective Date. This contract was awarded on or after August 8, 2005 and at contract award contained the clause at DEAR 952.250-70 (JUN 1996) or prior version. That clause has been deleted and replaced with this clause. The Price-Anderson Amendments Act of 2005, described by this clause, control the indemnity for any nuclear incident that occurred on or after August 8, 2005. The Contractor’s liability for civil penalties for violations of the Atomic Energy Act of 1954 under this contract is described by paragraph (i) of this clause.

(ii) If the contract was awarded prior to August 8, 2005 and contains the Nuclear Hazards Indemnity Agreement clause, dated June 1996 or prior version, add this clause in addition to the clause at 952.250-70 or prior version and use the EFFECTIVE DATE title and language, as follows:

“(1) Effective Date. This contract was in effect prior to August 8, 2005 and contains the clause at DEAR 952.250-70 (JUN 1996) or prior version. The indemnity of paragraph (d)(1) is limited to the indemnity provided by the Price-Anderson Amendments Act of 1988 for any nuclear incident to which the indemnity applies that occurred before August 8, 2005. The indemnity paragraph (d)(1) of this clause applies to any nuclear incident that occurred on or after August 8, 2005. The Contractor’s liability for

violations of the Atomic Energy Act of 1954 under this contract is that in effect prior to August 8, 2005.

(iii) If the contract contains the model clause in AL 2005-15 or its equivalent, no additional changes to the clauses need to be made.

(End of note)

Note II

The following alternate will be added to the above Nuclear Hazards Indemnity Agreement clause for all contracts that contain a general authority indemnity pursuant to 950.7101. Caution: Be aware that for contracts that will have this provision added which do not contain an effective date provision, this paragraph shall be marked (1). In the event an Effective Date provision has been included, it shall be marked (m).

“() To the extent that the contractor is compensated by any financial protection, or is indemnified pursuant to this clause, or is effectively relieved of public liability by an order or orders limiting same, pursuant to 170e of the Act, the provisions of the clause providing general authority indemnity shall not apply.”

(End of note)