Part II – Contract Clauses

Section I

Contract Clauses
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1. 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:

- [https://www.acquisition.gov/?q=browsefar](https://www.acquisition.gov/?q=browsefar)

### Table I-1. Clauses

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<td>(c) CD-ROM, as requested by the Contracting Officer.</td>
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<td>I.110</td>
<td>52.227-14</td>
<td>Rights in Data – General (May 2014) – ALTERNATE V (Applies if any “data” will be produced, furnished, or acquired under the contract.) If delivery of Limited Rights Data is required, then ALTERNATE II shall apply. If delivery of Restricted Computer Software is required, then ALTERNATE III shall apply.</td>
<td>(g)(3) Purposes as set forth in 27.404-2(c)(1), and for Government business purposes (except for manufacture). If Alt. II applies, the following disclosure purposes are added to the end of paragraph (a) of the Limited Rights Notice: 1. Use (except for manufacture) by support services contractors or subcontractors; 2. Evaluation by non-government evaluators; 3. Use (except for manufacture) by other contractors or subcontractors participating in the</td>
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<td>Additional Data Requirements (Jun 1987)</td>
<td>Government’s program of which the specific subcontract is a part;</td>
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<td>Subcontracts (Oct 2010) – Alt I (Jun 2007) (d) The DOE Contracting Officer will issue within 30 days from Notice to Proceed a letter to the Contractor setting thresholds for consent to subcontract for all subcontracts; (j) Contracting Officer fill in at award.</td>
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<td>Value Engineering (Oct 2010)</td>
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<td>Value Engineering—Construction (Oct 2015)</td>
<td>(h)(i) Contract number will be inserted at time of award.</td>
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1. This contract incorporates one or more clauses, by reference, as indicated in the matrix above.
2. Any clauses that are included in full text are listed below and include the same Section I identifier in parentheses as was used above.
3. **(I.18)** FAR 52.204-13, System for Award Management Maintenance (Oct. 2016)
4. (a) Definitions. As used in this clause:
   
   “Electronic Funds Transfer (EFT) indicator” means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management (SAM) records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

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

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

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

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

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

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

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

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

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

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

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

(c) (1) (i) If a Contractor has legally changed its business name, doing business as name, or division
name (whichever is shown on the contract), or has transferred the assets used in performing the
contract, but has not completed the necessary requirements regarding novation and
change-of-name agreements in subpart 42.12, the Contractor shall provide the responsible
Contracting Officer a minimum of one business day’s written notification of its intention to—

(A) Change the name in the SAM database;

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

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

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

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

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

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

(I.23) FAR 52.204-21 Basic Safeguarding of Covered Contractor Information
Systems (Jun. 2016)

(a) Definitions. As used in this clause—

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

“Federal contract information” means information, not intended for public release, that is provided by or
generated for the Government under a contract to develop or deliver a product or service to the
Government, but not including information provided by the Government to the public (such as on public
websites) 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 sub-networks for publicly accessible system components that are physically or
logically separated from internal networks.

(xii) Identify, report, and correct information and information system flaws in a timely manner.

(xiii) Provide protection from malicious code at appropriate locations within organizational
information systems.

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

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

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

(c) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (c),
in subcontracts under this contract (including subcontracts for the acquisition of commercial items,
other than commercially available off-the-shelf items), in which the subcontractor may have Federal
contract information residing in or transiting through its information system.
(I.41) FAR 52.216-18 Ordering (Oct. 1995) – Applies To IDIQ CLINs Only

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from the Start Date of the Base Period CLINs, as defined in Section F.3, DOE-F-2003 entitled, Period of Performance – Alternate I & Alternate II, through the end of contract performance as specified in Section F.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered “issued” when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(I.42) FAR 52.216-19 Order Limitations (Oct. 1995) – Applies To IDIQ CLINs Only

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than $25,000.00 the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) Maximum order. The Contractor is not obligated to honor:

(1) Any order for a single item in excess of $400,000,000.00;

(2) Any order for a combination of items in excess of $400,000,000.00; or

(3) A series of orders from the same ordering office within 365 days that together call for quantities exceeding the limitation in subparagraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 5 days after issuance, with written notice stating the Contractor’s intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(I.43) FAR 52.216-22, Indefinite Quantity (Oct. 1995) – Applies To IDIQ CLINs Only

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the “maximum.” The Government shall order at least the quantity of supplies or services designated in the Schedule as the “minimum.”
(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor’s and Government’s rights and obligations with respect to that order to the same extent as if the order were completed during the contract’s effective period; provided, that the Contractor shall not be required to make any deliveries under this contract one year beyond the expiration date of the contract period.

(I.45) FAR 52.217-9, Option to Extend the Term of the Contract (Mar. 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 30 days of the contract expiration date; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

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

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 10 years.

(I.72) FAR 52.222-35, Equal Opportunity for Veterans (Oct. 2015)

(a) Definitions. As used in this clause—

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

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

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

(I.73) FAR 52.222-36, Equal Opportunity for Workers with Disabilities (Jul. 2014)

(a) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

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

(I.77) FAR 52.222-42, Statement of Equivalent Rates for Federal Hires (May 2014)

In compliance with the Service Contract Labor Standards statute 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 (Please refer to Section J, Attachment J-9 for Wage Determinations applicable to this Contract)

<table>
<thead>
<tr>
<th>Classifications</th>
<th>Grade</th>
<th>Equivalent Pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Assistant</td>
<td>GS-7</td>
<td>19.25</td>
</tr>
<tr>
<td>Carpenter</td>
<td>WG-9</td>
<td>23.21</td>
</tr>
<tr>
<td>Computer Operator</td>
<td>GS-6</td>
<td>17.32</td>
</tr>
<tr>
<td>Electrician</td>
<td>WG-10</td>
<td>25.04</td>
</tr>
<tr>
<td>Engineering Technician</td>
<td>GS-9</td>
<td>23.54</td>
</tr>
<tr>
<td>Environmental Technician</td>
<td>GS-7</td>
<td>19.25</td>
</tr>
<tr>
<td>Forklift Operator</td>
<td>WG-5</td>
<td>15.89</td>
</tr>
<tr>
<td>Guard</td>
<td>GS-5</td>
<td>15.54</td>
</tr>
<tr>
<td>Heavy Equipment Operator</td>
<td>WG-10</td>
<td>25.04</td>
</tr>
<tr>
<td>HVAC</td>
<td>WG-10</td>
<td>25.04</td>
</tr>
<tr>
<td>Instrument Mechanic</td>
<td>WG-10</td>
<td>25.04</td>
</tr>
<tr>
<td>Janitor</td>
<td>WG-2</td>
<td>10.50</td>
</tr>
<tr>
<td>Laborer</td>
<td>WG-2</td>
<td>10.50</td>
</tr>
<tr>
<td>Machinist</td>
<td>WG-10</td>
<td>25.04</td>
</tr>
<tr>
<td>Motor Vehicle Operator</td>
<td>WG-7</td>
<td>19.56</td>
</tr>
<tr>
<td>Painter</td>
<td>WG-9</td>
<td>23.21</td>
</tr>
<tr>
<td>Pipefitter</td>
<td>WG-10</td>
<td>25.04</td>
</tr>
<tr>
<td>Receiving Clerk</td>
<td>WG-4</td>
<td>14.06</td>
</tr>
<tr>
<td>Secretary</td>
<td>GS-6</td>
<td>17.32</td>
</tr>
<tr>
<td>Technical Instructor</td>
<td>GS-7</td>
<td>19.25</td>
</tr>
<tr>
<td>Technical Writer</td>
<td>GS-9</td>
<td>23.54</td>
</tr>
</tbody>
</table>
Table I-2. Classes of Service, Wage, and Fringe Benefits

<table>
<thead>
<tr>
<th>Classifications</th>
<th>Grade</th>
<th>Equivalent Pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Truck Driver</td>
<td>WG-8</td>
<td>21.38</td>
</tr>
<tr>
<td>Warehouse Specialist</td>
<td>WG-5</td>
<td>15.89</td>
</tr>
<tr>
<td>Water Treatment Operator</td>
<td>WG-9</td>
<td>23.21</td>
</tr>
<tr>
<td>Welder</td>
<td>WG-10</td>
<td>25.04</td>
</tr>
</tbody>
</table>

Note: The fringe benefit rate is $4.27/hour which is in addition to the above hourly rates.

(I.86) 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.102) FAR 52.225-9, Buy American – Construction Materials (May 2014)

(a) Definitions. As used in this clause:

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

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

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

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

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

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.
“Component” means an article, material, or supply incorporated directly into a construction material.

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

“Cost of components” means:

(3) 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

(4) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Domestic construction material” means:

(1) An unmanufactured construction material mined or produced in the United States;

(2) A construction material manufactured in the United States, if:

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which non-availability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

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

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

(b) Domestic preference.

(1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.505(a)(2)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”]
(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that—

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

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

(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.

(iv) 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).

(v) 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:

<table>
<thead>
<tr>
<th>Construction Material Description</th>
<th>Unit of Measure</th>
<th>Quantity</th>
<th>Price (Dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item 1 Foreign construction material</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item 1 Domestic construction material</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item 2 Foreign construction material</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item 2 Domestic construction material</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(I.103) FAR 52.225-11, Buy American-Construction Materials Under Trade Agreements (Oct. 2016)

(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 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

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

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or 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 (WTO GPA) country
   (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, 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, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, 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, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, 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 non-availability determinations have been made are treated as domestic; or
(ii) The construction material is a COTS item.

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

“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 an FTA country into a new and different construction material distinct from the materials from which it was transformed.

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

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

“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 41 U.S.C. chapter 83, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country 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:

   1. Contracting Officer to list applicable excepted materials or indicate “none”]

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

   1. 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 statute is
unreasonable when the cost of such material exceeds the cost of foreign material by more
than 6 percent;

(ii) The application of the restriction of the Buy American 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 statute.

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

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

(B) Unit of measure;

(C) Quantity;

(D) 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)(4)(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.
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:

<table>
<thead>
<tr>
<th>Construction Material Description</th>
<th>Unit of Measure</th>
<th>Quantity</th>
<th>Price (Dollars)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreign construction material</td>
<td>______</td>
<td>______</td>
<td>______</td>
</tr>
<tr>
<td>Domestic construction material</td>
<td>______</td>
<td>______</td>
<td>______</td>
</tr>
<tr>
<td>Item 2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign construction material</td>
<td>______</td>
<td>______</td>
<td>______</td>
</tr>
<tr>
<td>Domestic construction material</td>
<td>______</td>
<td>______</td>
<td>______</td>
</tr>
</tbody>
</table>

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

[Include other applicable supporting information.]

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

(I.152) FAR 52.247-67, Submission of Transportation Documents for Audit (Feb. 2006)

(a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid:

(1) By the Contractor under a cost-reimbursement contract; and

(2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

(b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding $100. Bills under $100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

(c) Contractors shall submit the above referenced transportation documents to:

[Contracting Officer identified in Section G]

(I.161) DEAR 952.202-1, Definitions (Feb. 2011)

As prescribed in 902.201, insert the clause at 48 CFR 52.202-1, Definitions, in all contracts. The following shall be added to the clause as paragraph (c):

(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.

(I.162) 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.

(I.163) DEAR 952.204-2, Security (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.
(1) 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.

(2) 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.

(3) 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 subcontract 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.

[I.164] 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 Classifier 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.

(I.165) DEAR 952.204-75, Public Affairs (Dec. 2000)

(a) The Contractor must cooperate with the Department in releasing unclassified information to the public and news media regarding DOE policies, programs, and activities relating to its effort under the contract. The responsibilities under this clause must be accomplished through coordination with the Contracting Officer and appropriate DOE public affairs personnel in accordance with procedures defined by the Contracting Officer.

(b) The Contractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of unclassified information regarding DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.

(c) The Contractor’s internal procedures must ensure that all releases of information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Contractor’s organization.
(d) The Contractor must comply with DOE procedures for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.

(e) Unless prohibited by law, and in accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of communications or contacts with Members of Congress relating to the effort performed under the contract.

(f) In accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the contract.

(g) In releases of information to the public and news media, the Contractor must fully and accurately identify the Contractor’s relationship to the Department and fully and accurately credit the Department for its role in funding programs and projects resulting in scientific, technical, and other achievements.

(I.166) 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.
(I.167) 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.

(I.168) DEAR 952.208-70, Printing (Apr. 1984)

The Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size $8\frac{1}{2}$ by 11 inches one side only, one color. A requirement is defined as a single publication document.

1. The term printing includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes.

2. If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the Contractor shall notify the Contracting Officer in writing and obtain the Contracting Officer's approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Office (GPO), a contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.

3. Printing services not obtained in compliance with this guidance will result in the cost of such printing being disallowed.

4. The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).


(a) Purpose. The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as “Contractor”) in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

1. Use of contractor's work product.
(i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Contractor’s performance of work under this contract for a period of (Contracting Officer see 48 CFR 909.507-2 and enter specific term) years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information.

(i) If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer it shall not—

(A) Use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) Compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) Submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) Release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The Contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award.
(1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to
award of this contract, occur during the performance of this contract, it shall make an immediate
and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may
include a description of any action which the Contractor has taken or proposes to take to avoid,
neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate
the contract for convenience if it deems such termination to be in the best interest of the
Government.

(2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an
actual or potential organizational conflict of interest and did not disclose such facts or such
conflict of interest to the Contracting Officer, DOE may terminate this contract for default.

(d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of
any facts required to be disclosed concerning this contract, including the existence of an actual or
potential organizational conflict of interest at the time of or after award, the Government may
terminate the contract for default, disqualify the Contractor from subsequent related contractual
efforts, and pursue such other remedies as may be permitted by law or this contract.

(e) Waiver. Requests for waiver under this clause shall be directed in writing to the Contracting Officer
and shall include a full description of the requested waiver and the reasons in support thereof. If it is
determined to be in the best interests of the Government, the Contracting Officer may grant such a
waiver in writing.

(f) Subcontracts.

(1) The Contractor shall include a clause, substantially similar to this clause, including this paragraph
(f), in subcontracts expected to exceed the simplified acquisition threshold determined in
accordance with 48 CFR part 13 and involving the performance of advisory and assistance
services as that term is defined at 48 CFR 2.101. The terms “contract,” “Contractor,” and
“contracting officer” shall be appropriately modified to preserve the Government’s rights.

(2) Prior to the award under this contract of any such subcontracts for advisory and assistance
services, the Contractor shall obtain from the proposed subcontractor 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.

(I.170) DEAR 952.215-70, Key Personnel (Dec. 2000)

(a) The personnel listed below or elsewhere in this contract at Section H.48, DOE-H-2070 Key Personnel
– Alternate I (Oct 2014) (Revised) 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.

(I.171) DEAR 952.216-7, Allowable Cost and Payment (Feb. 2011)

As prescribed in 916.307(a), when contracting with a commercial organization modify paragraph (a) of the clause at 48 CFR 52.216-7 by adding the phrase “as supplemented by subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR),” after 48 CFR subpart 31.2.

(I.172) DEAR 952.217-70, Acquisition of Real Property (Mar. 2011)

(a) Notwithstanding any other provision of the contract, the prior approval of the Contracting Officer shall be obtained when, in performance of this contract, the Contractor acquires or proposes to acquire use of real property by:

(2) Purchase, on the Government’s behalf or in the Contractor’s own name, with title eventually vesting in the Government.

(3) Lease for which the Department of Energy will reimburse the incurred costs as a reimbursable contract cost.

(4) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.

(b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the Contracting Officer.

(c) The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

(I.173) DEAR 952.223-71, Integration of Environment, Safety, and Health into Work Planning and Execution (July 2009)

As prescribed in 923.7003 the clause set forth at 970.5223-1 shall be included in all contracts and subcontracts for, and be made applicable to, work to be performed at a government-owned or leased facility where DOE has elected to assert its statutory authority to establish and enforce occupational safety and health standards applicable to the work conditions of contractor and subcontractor employees, and to the protection of the public health and safety.


Individual occupational radiation exposure records generated in the performance of work under this contract shall be generated and maintained by the contractor in accordance with 36 CFR Chapter XII, Subchapter B, “Records Management,” the National Archives and Records Administration (NARA) - approved DOE Records Disposition Schedules, and shall be operated as a DOE Privacy Act system of records, in accordance with the Privacy Act.
(I.175) 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)

(a) General.

(1) The payment of fee or profit (i.e., award fee, fixed fee, and incentive fee or profit) under this contract is dependent upon the Contractor’s compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information (i.e., Formerly Restricted Data and National Security Information) and relating to the protection of worker safety and health, including compliance with applicable law, regulation, and DOE directives. The term “contractor” as used in this clause to address failure to comply shall mean “contractor or contractor employee.”

(2) In addition to other remedies available to the Federal Government, if the Contractor fails to comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information or relating to the protection of worker safety and health, the Contracting Officer may unilaterally reduce the amount of fee or profit that is otherwise payable to the Contractor in accordance with the terms and conditions of this clause.

(3) Any reduction in the amount of fee or profit earned by the Contractor will be determined by the severity of the Contractor’s failure to comply with contract terms and conditions relating to the safeguarding of Restricted Data or other classified information or relating to worker safety and health pursuant to the degrees specified in paragraphs (c) and (d) of this clause.

(b) Reduction Amount.

(1) If in any period (see paragraph (b)(2) of this clause) it is found that the Contractor has failed to comply with contract terms and conditions relating to the safeguarding of Restricted Data or other classified information or relating to the protection of worker safety and health, the Contractor’s fee or profit of the period may be reduced. Such reduction shall not be less than 26% nor greater than 100% of the total fee or profit earned for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure. The Contracting Officer must consider mitigating factors that may warrant a reduction below the specified range (see 48 CFR 904.402(c) and 48 CFR 923.7002(a)(2)). The mitigating factors include, but are not limited to, the following (v), (vi), (vii), and (viii) apply to worker safety and health (WS&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: safeguarding Restricted Data and other classified information and compliance in related security areas; or of protecting WS&H and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer’s satisfaction that the principles of industrial WS&H standards are routinely practiced (e.g., Voluntary Protection Program Star Status).
(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 WS&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, WS&H programs).

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in WS&H by use of lessons-learned and best practices inter- and intra-DOE sites.

(2) (i) Except in the case of performance-based, firm-fixed-price contracts (see paragraph (b)(3) of this clause), the Contracting Officer, for purposes of this clause, will at the time of contract award, or as soon as practicable thereafter, allocate the total amount of fee or profit that is available under this contract to equal periods of 12 months to run sequentially for the entire term of the contract (i.e., from the effective date of the contract to the expiration date of the contract, including all options). The amount of fee or profit to be allocated to each period shall be equal to the average monthly fee or profit that is available or otherwise payable during the entire term of the contract, multiplied by the number of months established above for each period.

(ii) Under this clause, the total amount of fee or profit that is subject to reduction in a period in which a performance failure occurs, in combination with any reduction made under any other clause in the contract that provides for a reduction to the fee or profit, shall not exceed the amount of fee or profit that is earned by the Contractor in the period established pursuant to paragraph (b)(2)(i) of this clause.

(3) For performance-based firm-fixed-price contracts, the Contracting Officer will at the time of contract award include negative monetary incentives in the contract for Contractor violations relating to the safeguarding of Restricted Data and other classified information and relating to protection of worker safety and health.

(c) 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 failures relating to the Contractor’s obligations under this contract for safeguarding of Restricted Data and other classified information are as follows:

(1) First Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE 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 classified 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, regulation, or DOE 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 (c)(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 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 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.
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.

(d) Protection of Worker Safety and Health. Performance failures occur if the contractor does not comply with the contract’s WS&H terms and conditions, which may be included in the DOE approved contractor Integrated Safety Management System (ISMS). The degrees of performance failure under which reductions of fee or profit will be determined are:

(1) First Degree: Performance failures that are most adverse to WS&H or could threaten the successful completion of a program or project. For contracts including ISMS requirements, failure to develop and obtain required DOE approval of WS&H aspects 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 WS&H aspects of the Contractor’s ISMS. The following performance failures or performance failures of similar import will be deemed first degree:

(i) Type A accident (defined in DOE Order 225.1A, Accident Investigations, or its successor).

(ii) Two Second Degree performance failures during an evaluation period.

(2) Second Degree: Performance failures that are significantly adverse to WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in an actual injury, exposure, or exceedance that occurred or nearly occurred but had minor practical long-term health consequences. The following performance failures or performance failures of similar import will be considered second degree:

(i) Type B accident (defined in DOE Order 225.1A, Accident Investigations, or its successor).

(ii) Non-compliance with approved WS&H aspects of an 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 WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in potential breakdown of the Contractor’s WS&H 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-compliance documented through external (e.g., Federal) oversight and/or reported per DOE Manual 231.1-2, Occurrence Reporting and Processing of Operations Information, or its successor, requirements, or internal oversight of DOE Order 470.2B, Independent Oversight and Performance Assurance Program, or its successor requirements.

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

(iii) Non-compliances that either have, or may have, significant negative impacts to workers that indicate a significant WS&H system breakdown.
(iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(I.176) DEAR 952.223-78, Sustainable Acquisition Program (Oct. 2010) (Deviation¹)

(a) Pursuant to Executive Order 13693, Planning for Federal Sustainability in the Next Decade, 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 initiatives important to the Executive Order are explained on the following Government or Industry Internet Sites:

(1) Recycled Content Products are described at [https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program](https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program).

(2) Biobased Products are described at [http://www.biopreferred.gov/](http://www.biopreferred.gov/).


(4) Energy efficient products are at [https://energy.gov/eere/femp/search-energy-efficient-products](https://energy.gov/eere/femp/search-energy-efficient-products) for FEMP designated products.

(5) Environmentally preferable and energy efficient electronics including desktop computers, laptops and monitors are at [http://www.epeat.net](http://www.epeat.net) the Electronic Products Environmental Assessment Tool (EPEAT) the Green Electronics Council site.

(6) Significant New Alternative Policy (SNAP) chemicals or other alternatives to ozone-depleting substances and high global warming potential hydrofluorocarbons are at [http://www.epa.gov/ozone/strathome.html](http://www.epa.gov/ozone/strathome.html).

(7) Water efficient plumbing products are at [http://epa.gov/watersense](http://epa.gov/watersense).

(8) Safer Choice labelled products (chemically intensive products that contain safer ingredients) are at [https://www.epa.gov/saferchoice](https://www.epa.gov/saferchoice).

(9) SmartWay Transport partners and SmartWay products (fuel efficient products and services) are at [https://www.epa.gov/smartway](https://www.epa.gov/smartway).

(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

¹ Issued on March 25, 2015, Executive Order 13693, Planning for Federal Sustainability in the Next Decade, revoked both Executive Orders 13514 and 13423. The deviated version of this clause replaces these references with references to the new Executive Order 13693 and its requirements, along with other minor improvements. A class deviation to DEAR 952.223-78 is pending formal amendment of the DEAR.
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 (EPEAT is an example of lifecycle costs that have been analyzed by DOE and found to be acceptable at the silver and gold level);
3. Does not meet performance needs; or,
4. Cannot be delivered in time to meet a critical need.


(e) Contractors must establish and maintain a documented energy management program which includes requirements for energy and water efficient equipment, EnergyStar or WaterSense, as applicable and procedures for verification of purchases, following the criteria in DOE Order 436.1 Departmental Sustainability, or its successor to the extent required elsewhere in the contract. This requirement should not be flowed down to subcontractors.

(f) In complying with the requirements of paragraph (c) of this clause, the Contractor(s) shall coordinate its activities with the Environmental Sustainability Coordinator or equivalent position. Reporting under paragraphs (g) and (h) of this clause is only required if the contract or subcontract offers subcontracting opportunities for energy efficient and environmentally sustainable products or services exceeding $100,000 in any contract year.

(g) The Contractor shall prepare and submit performance reports, if required, 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.

(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, if subcontracting opportunities for sustainable and environmentally preferable products or services exceed the threshold in paragraph (f) of this clause, 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.

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

Alternate I for Construction Contracts and Subcontracts (Oct. 2010) (Deviation¹)
When contracting for construction, alteration, or renovation of DOE facilities, substitute the following paragraphs (d) through (i):

(d) When developing the Bill of Materials for approval of the Contracting Officer or Representative, the contractor shall provide energy efficient and environmentally sustainable materials to the extent possible within the constraints of the general design specifications. For building construction and renovation, the Contractor must demonstrate compliance with the Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings (Guiding Principles) 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. Reporting under paragraphs (g) and (h) of this clause is only required if the contract or subcontract offers subcontracting opportunities for energy efficient and environmentally sustainable products or services exceeding $100,000 in any contract year, except for reporting on high performance sustainable buildings which may be required elsewhere in this contract.

(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.

(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, if subcontracting opportunities for sustainable and environmentally preferable products or services exceed the threshold in paragraph (f) of this clause, 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.

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


(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.


(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 limitation of cost or limitation of funds clause of this contract.

(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, judgment 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 970.31, as supplemented by 48 CFR part 931;
(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

(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.


(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.180) DEAR 952.245-5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts)
Modify FAR 52.245-1 by adding “and DOE Acquisition Regulation Subpart 945.5” after the reference to FAR Subpart 45.5 in paragraphs (e)(1) and (e)(2) of the clause.

(I.181) DEAR 952.247-70, Foreign Travel (Jun. 2010)
Contractor foreign travel shall be conducted pursuant to the requirements contained in Department of Energy (DOE) Order 551.1C, Official Foreign Travel, or its successor in effect at the time of award.

(a) Authority. This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
(b) Definitions. The definitions set out in the Act shall apply to this clause.
(c) Financial protection. Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.

(d) (1) Indemnification. To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE’s liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or $100 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

(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. of the Act for the activities under the subcontract.

Effective Date

( ) See note II below for instructions related to this section on Effective Date.

Relationship to General Indemnity

( ) See note III below for instructions related to this section on Relationship to General Indemnity.

NOTE I
Paragraph (i) of the clause will be replaced with “Reserved” in contracts specifically exempted from civil penalties by section 234 of the Act. That subsection provides that the following DOE contractors are not subject to the assessment of civil penalties:

1. The University of Chicago (and any subcontractors or suppliers thereto) for activities associated with Argonne National Laboratory;

2. The University of California (and any subcontractors or suppliers thereto) for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;

3. American Telephone and Telegraph Company and its subsidiaries (and any subcontractors or suppliers thereto) for activities associated with Sandia National Laboratories;

4. Universities Research Association, Inc. (and any subcontractors or suppliers thereto) for activities associated with FERMI National Laboratory;

5. Princeton University (and any subcontractor or suppliers thereto) for activities associated with Princeton Plasma Physics Laboratory;

6. The Associated Universities, Inc. (and any subcontractors or suppliers thereto) for activities associated with the Brookhaven National Laboratory; and

7. Battelle Memorial Institute (and any subcontractors or suppliers thereto) for activities associated with Pacific Northwest Laboratory.

Note II

Contracts with an effective date after the date of June 12, 1996, do not require the effective date provision in this clause. Delete the title.

Use the EFFECTIVE DATE title and the following language, for those contracts:

“(...) This indemnity agreement shall be applicable with respect to nuclear incidents occurring on or after ___."

1. Those that contained an indemnity pursuant to Public Law 85-840 prior to August 20, 1988, include the effective date provision above, inserting the effective date of the contract modification that replaced the Public Law 85-804 indemnity with an interim Price-Anderson based indemnity. Pursuant to the Price-Anderson Amendments Act, this substitution must have taken place by February 20, 1989.

2. Those that contained, and continue to contain, either of the previous Nuclear Hazards Indemnity clauses, include the effective date provision above, inserting “August 20, 1988.”

3. Those with an effective date between August 20, 1988, and the date of the Final Rule, that (a) had “interim coverage” or (b) did not have “interim coverage” but have now been determined to be covered under the PAAA, include the effective date provision above, inserting the contract effective date.

Note III

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
market (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.”

(I.183) DEAR 952.251-70, Contractor Employee Travel Discounts (Aug. 2009)

(a) The Contractor shall take advantage of travel discounts offered to Federal Contractor employee
travellers 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. The 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
(I.184) DEAR 970.5203-1, Management Controls (Jun 2007)

(a) (1) The Contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted by management to reasonably ensure that: the mission and functions assigned to the Contractor are properly executed; efficient and effective operations are promoted including consideration of outsourcing of functions; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the Contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely.

(2) The systems of controls employed by the Contractor shall be documented and satisfactory to DOE.

(3) Such systems shall be an integral part of the Contractor’s management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility.

(4) The Contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively. Annually, or at other intervals directed by the Contracting Officer, the Contractor shall supply to the Contracting Officer copies of the reports reflecting the status of recommendations resulting from management audits performed by its internal audit activity and any other audit organization. This requirement may be satisfied in part by the reports required under paragraph (i) of 48 CFR 970.5232-3, Accounts, records, and inspection.

(b) The Contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

(I.185) DEAR 970.5204-2, Laws, Regulations, and DOE Directives (DEC 2000)

(a) In performing work under this contract, the Contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the Contractor to comply with such law or regulation pursuant to this paragraph.

(b) In performing work under this contract, the Contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in paragraph (d) of this clause, the Contracting Officer may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the Contracting Officer shall notify the Contractor in writing of the Department’s intent to revise List
B and provide the Contractor with the opportunity to assess the effect of the Contractor’s compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the Contracting Officer’s notice, the Contractor shall advise the Contracting Officer in writing of the potential impact of the Contractor’s compliance with the revised list. Based on the information provided by the Contractor and any other information available, the Contracting Officer shall decide whether to revise List B and so advise the Contractor not later than 30 days prior to the effective date of the revision of List B. The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of List B pursuant to the clause of this contract entitled, “Changes.”

(c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under the clause entitled “Integration of Environment, Safety, and Health into Work Planning and Execution.” When such a process is used, the set of tailored (ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the Contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.

(d) Except as otherwise directed by the Contracting Officer, the Contractor shall procure all necessary permits or licenses required for the performance of work under this contract.

(e) Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the Contractor’s compliance with the requirements.

(I.186) DEAR 970.5204-3, Access To and Ownership of Records (Oct. 2014) (Deviation)

(a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract, including records series described within the contract as Privacy Act systems of records, shall be the property of the Government and shall be maintained in accordance with 36 Code of Federal Regulations (CFR), Chapter XII, -- Subchapter B, “Records Management.” The contractor shall ensure records classified as Privacy Act system of records are maintained in accordance with FAR 52.224.2 “Privacy Act.”

(b) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause.

(1) Employment-related records (such as worker’s compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel
and medical/health related records and similar files), and non-employee patient
medical/health-related records, except those records described by the contract as being operated
and maintained by the Contractor in Privacy Act system of records.

(2) Confidential contractor financial information, internal corporate governance records and
correspondence between the contractor and other segments of the contractor located away from
the DOE facility (i.e., the contractor’s corporate headquarters);

(3) Records relating to any procurement action by the contractor, except for records that under
48 CFR 970.5232-3 are described as the property of the Government; and

(4) Legal records, including legal opinions, litigation files, and documents covered by the
attorney-client and attorney work product privileges; and

(5) The following categories of records maintained pursuant to the technology transfer clause of this
contract:

(i) Executed license agreements, including exhibits or appendices containing information on
royalties, royalty rates, other financial information, or commercialization plans, and all
related documents, notes and correspondence.

(ii) The contractor’s protected Cooperative Research and Development Agreement (CRADA)
information and appendices to a CRADA that contain licensing terms and conditions, or
royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related contractor
invention disclosures, documents and correspondence, where the contractor has elected rights
or has permission to assert rights and has not relinquished such rights or turned such rights
over to the Government.

(c) Contract completion or termination. Upon contract completion or termination, the contractor shall
ensure final disposition of all Government-owned records to a Federal Record Center, the National
Archives and Records Administration, to a successor contractor, its designee, or other destinations, as
directed by the Contracting Officer. Upon the request of the Government, the contractor shall provide
either the original contractor-owned records or copies of the records identified in paragraph (b) of this
clause, to DOE or its designees, including successor contractors. Upon delivery, title to such records
shall vest in DOE or its designees, and such records shall be protected in accordance with applicable
federal laws (including the Privacy Act) as appropriate. If the contractor chooses to provide its
original contractor-owned records to the Government or its designee, the contractor shall retain future
rights to access and copy such records as needed.

(d) Inspection, copying, and audit of records. All records acquired or generated by the Contractor under
this contract in the possession of the Contractor, including those described at paragraph (b) of this
clause, shall be subject to inspection, copying, and audit by the Government or its designees at all
reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities
for such inspection, copying, and audit; provided, however, that upon request by the Contracting
Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for
inspection, copying, and audit. The Government or its designees shall use such records in accordance
with applicable federal laws (including the Privacy Act), as appropriate.

(e) Applicability. This clause applies to all records created, received and maintained by the contractor
without regard to the date or origination of such records including all records acquired from a
predecessor contractor.
(f) Records maintenance and retention. Contractor shall create, maintain, safeguard, and disposition records in accordance with 36 Code of Federal Regulations (CFR) Chapter XII, -- Subchapter B, “Records Management” and the National Archives and Records Administration (NARA)-approved Records Disposition Schedules. Records retention standards are applicable for all classes of records, whether or not the records are owned by the Government or the contractor. The Government may waive application of the NARA-approved Records Disposition Schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies of records described in paragraph (b) and delivery of records described in paragraph (a) of this clause.

(g) Subcontracts.

(1) The contractor shall include the requirements of this clause in all subcontracts that contain the Radiation Protection and Nuclear Criticality clause at 952.223–72, or whenever an on-site subcontract scope of work (i) could result in potential exposure to: A) radioactive materials; B) beryllium; or C) asbestos or (ii) involves a risk associated with chronic or acute exposure to toxic chemicals or substances or other hazardous materials that can cause adverse health impacts, in accordance with 10 CFR part 851. In determining its flow-down responsibilities, the Contractor shall include the requirements of this clause in all on-site subcontracts where the scope of work is performed in: (A) Radiological Areas and/or Radioactive Materials Areas (as defined at 10 CFR 835.2); (B) areas where beryllium concentrations exceed or can reasonably be expected to exceed action levels specified in 10 CFR 850; (C) an Asbestos Regulated area (as defined at 29 CFR 1926.1101 or 29 CFR 1910.1001); or (D) a workplace where hazard prevention and abatement processes are implemented in compliance with 10 CFR 851.21 to specifically control potential exposure to toxic chemicals or substances or other hazardous materials that can cause long term health impacts.

(2) The Contractor may elect to take on the obligations of the provisions of this clause in lieu of the subcontractor, and maintain records that would otherwise be maintained by the subcontractor.

(l.187) DEAR 970.5217-1, Strategic Partnership Projects Program (Apr. 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.

(I.188) DEAR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning (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 (f) 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.

(l.189) 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.

(l.190) DEAR 970.5226-2, Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993

(a) Consistent with the objectives of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, 42 U.S.C. 7274h, in instances where the Department of Energy has determined that a change in workforce at a Department of Energy Defense Nuclear Facility is necessary, the contractor agrees to (1) comply with the Department of Energy Workforce Restructuring Plan for the facility, if
applicable, and (2) use its best efforts to accomplish workforce restructuring or displacement so as to mitigate social and economic impacts.

(b) The requirements of this clause shall be included in subcontracts at any tier (except subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed $500,000.

(I.191) 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.


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.

(I.193) 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.

(I.194) DEAR 970.5232-3, Accounts, Records, and Inspections (Dec. 2010) – Alt I

(a) Accounts. The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the Contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

(b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause 970.5204-3, Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the Contractor shall afford DOE proper facilities for such inspection and audit.

(c) Audit of subcontractors’ records. The Contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor’s costs or arrange for such an audit to be performed by the cognizant government audit agency through the Contracting Officer.

(d) Disposition of records. Except as agreed upon by the Government and the Contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause 970.5204-3, Access to and Ownership of Records, all other records in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.

(e) Reports. The Contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.

(f) Inspections. The DOE shall have the right to inspect the work and activities of the Contractor under this contract at such time and in such manner as it shall deem appropriate.

(g) Subcontracts. The Contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

(h) Comptroller general.
(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor’s or subcontractor’s directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.

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

(3) Nothing in this contract shall be deemed to preclude an audit by the Government Accountability Office of any transaction under this contract.

(i) Internal audit. The Contractor agrees to design and maintain an internal audit plan and an internal audit organization.

(1) Upon contract award, the exercise of any contract option, or the extension of the contract, the Contractor must submit to the Contracting Officer for approval an Internal Audit Implementation Design to include the overall strategy for internal audits. The Audit Implementation Design must describe—

(i) The internal audit organization’s placement within the Contractor’s organization and its reporting requirements;

(ii) The audit organization’s size and the experience and educational standards of its staff;

(iii) The audit organization’s relationship to the corporate entities of the Contractor;

(iv) The standards to be used in conducting the internal audits;

(v) The overall internal audit strategy of this contract, considering particularly the method of auditing costs incurred in the performance of the contract;

(vi) The intended use of external audit resources;

(vii) The plan for audit of subcontracts, both pre-award and post-award; and

(viii) The schedule for peer review of internal audits by other contractor internal audit organizations, or other independent third party audit entities approved by the DOE Contracting Officer.

(2) By each January 31 of the contract performance period, the Contractor must submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year. That report shall reflect the results of the internal audits during the previous fiscal year and the actions to be taken to resolve weaknesses identified in the contractor’s system of business, financial, or management controls.

(3) By each June 30 of the contract performance period, the Contractor must submit to the Contracting Officer an annual audit plan for the activities to be undertaken by the internal audit organization during the next fiscal year that is designed to test the costs incurred and contractor management systems described in the internal audit design.

(4) The Contracting Officer may require revisions to documents submitted under paragraphs (i)(1), (i)(2), and (i)(3) of this clause, including the design plan for the internal audits, the annual report, and the annual internal audits.
(j) Remedies. If at any time during contract performance, the Contracting Officer determines that unallowable costs were claimed by the Contractor to the extent of making the contractor’s management controls suspect, or the contractor’s management systems that validate costs incurred and claimed suspect, the Contracting Officer may, in his or her sole discretion, require the Contractor to cease using the special financial institution account in whole or with regard to specified accounts, requiring reimbursable costs to be claimed by periodic vouchering. In addition, the Contracting Officer, where he or she deems it appropriate, may: Impose a penalty under 48 CFR 970.5242-1, Penalties for Unallowable Costs; require a refund; reduce the contractor’s otherwise earned fee; and take such other action as authorized in law, regulation, or this contract.

(I.195) DEAR 970.5232-6, Strategic Partnership Project Funding Authorization (Apr. 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.