

SECTION I

CONTRACT CLAUSES

INDEX

The Section I clauses of the ID/IQ Basic Contract that are applicable to this *Task Order* are listed below. *Section I clauses marked with “*” have been updated to current dates where applicable.*

- I.1 FAR 52.202-1 Definitions. (JAN 2012) *
- I.2 FAR 52.203-3 Gratuities. (APR 1984)
- I.3 FAR 52.203-5 Covenant Against Contingent Fees. (APR 1984)
- I.4 FAR 52.203-6 Restrictions on Subcontractor Sales to the Government. (SEP 2006)
- I.5 FAR 52.203-7 Anti-Kickback Procedures. (OCT 2010) *
- I.6 FAR 52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity. (JAN 1997)
- I.7 FAR 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity. (JAN 1997)
- I.8 FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions. (OCT 2010) *
- I.9 FAR 52.203-13 Contractor Code of Business Ethics and Conduct. (APR 2010) *
- I.10 FAR 52.204-4 Printed or Copied Double-Sided on Recycled Paper. (MAY 2011) *
- I.11 FAR 52.204-7 Central Contractor Registration. (AUG 2012) *
- I.12 FAR 52.204-9 Personal Identity Verification of Contractor Personnel. (JAN 2011) *
- I.13 FAR 52.204-10 Reporting Subcontract Awards. (AUG 2011)
- I.14 FAR 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (DEC 2010) *
- I.15 RESERVED
- I.16 FAR 52.211-13 Time Extensions. (SEP 2000)
- I.17 FAR 52.215-2 Audit and Records - Negotiation. (OCT 2010) *
- I.18 FAR 52.215-8 Order of Precedence - Uniform Contract Format. (OCT 1997)
- I.19 FAR 52.215-10 Price Reduction for Defective Cost or Pricing Data. (AUG 2011) *

- I.20 FAR 52.215-12 Subcontractor Cost or Pricing Data. (OCT 2010) ***
- I.21 FAR 52.215-13 Subcontractor Cost or Pricing Data - Modifications. (OCT 2010) ***
- I.22 FAR 52.215-15 Pension Adjustments and Asset Reversions. (OCT 2010) ***
- I.23 Reserved**
- I.24 FAR 52.215-17 Waiver of Facilities Capital Cost of Money. (OCT 1997)**
- I.25 FAR 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions. (JUL 2005)**
- I.26 FAR 52.215-19 Notification of Ownership Changes. (OCT 1997)**

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

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall -

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

- I.27 FAR 52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modifications. (OCT 2010) ***
- I.28 Reserved**
- I.29 Reserved**
- I.30 Reserved**

- I.31 Reserved**
- I.32 Reserved**
- I.33 Reserved**
- I.34 Reserved**
- I.35 FAR 52.219-9 Small Business Subcontracting Plan. (JAN 2011) * – Alternate II (OCT 2001)**
- I.36 Reserved**
- I.37 FAR 52.219-16 Liquidated Damages - Subcontracting Plan. (JAN 1999)**
- I.38 FAR 52.219-28 Post-Award Small Business Program Rerepresentation (APR 2012) ***
- I.39 FAR 52.222-1 Notice to the Government of Labor Disputes. (FEB 1997)**
- I.40 FAR 52.222-3 Convict Labor. (JUN 2003)**
- I.41 FAR 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation. (JUL 2005)**
- I.42 FAR 52.222-6 Davis-Bacon Act. (JUL 2005)**
- I.43 FAR 52.222-7 Withholding of Funds. (FEB 1988)**
- I.44 FAR 52.222-8 Payrolls and Basic Records. (JUN 2010) ***
- I.45 FAR 52.222-9 Apprentices and Trainees. (JUL 2005)**
- I.46 FAR 52.222-10 Compliance with Copeland Act Requirements. (FEB 1988)**
- I.47 FAR 52.222-11 Subcontracts (Labor Standards). (JUL 2005)**
- I.48 FAR 52.222-12 Contract Termination - Debarment. (FEB 1988)**
- I.49 FAR 52.222-13 Compliance with Davis-Bacon and Related Act Regulations. (FEB 1988)**
- I.50 FAR 52.222-14 Disputes Concerning Labor Standards. (FEB 1988)**
- I.51 FAR 52.222-15 Certification of Eligibility. (FEB 1988)**
- I.52 FAR 52.222-20 Walsh-Healey Public Contracts Act. (OCT 2010) ***
- I.53 FAR 52.222-21 Prohibition of Segregated Facilities. (FEB 1999)**
- I.54 FAR 52.222-26 Equal Opportunity. (MAR 2007)**
- I.55 FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the**

Vietnam Era, and Other Eligible Veterans. (SEP 2010) *

- I.56 FAR 52.222-36 Affirmative Action for Workers with Disabilities. (OCT 2010) ***
- I.57 FAR 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans. (SEP 2010) ***
- I.58 Reserved**
- I.59 FAR 52.222-41 Service Contract Act of 1965. (NOV 2007)**
- I.60 FAR 52.222-42 Statement of Equivalent Rates for Federal Hires. (MAY 1989)**

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

This Statement is for Information Only:

It is not a Wage Determination

Employee	Class	Monetary Wage - Fringe Benefits
Administrative Assistant	GS-7	\$18.65
Clerk	GS-4	\$13.46
Maintenance Scheduler	GS-4	\$13.46
Secretary	GS-6	\$16.78
Computer Operator	GS-8	\$20.65
Computer Programmer	GS-9	\$22.81
Engineering Technician	GS-7	\$18.65
Lab Technician	GS-6	\$16.78
Environmental Technician	GS-7	\$18.65
Carpenter	WG-9	\$21.94
Electrician	WG-10	\$23.10
Pipefitter	WG-10	\$23.10
Painter	WG-9	\$21.94
Laborer	WG-3	\$14.63
Heavy Equipment Operator	WG-10	\$23.10
HVAC Technician	WG-10	\$23.10
Janitor	WG-2	\$13.25
Fork Lift Operator	WG-5	\$17.30
Shipping/Receiving	WG-4	\$16.02
Well Driller	WG-10	\$23.10
Boiler Operator	WG-10	\$23.10
Water Treatment Operator	WG-9	\$21.94
Truck Driver	WG-8	\$20.86

I.61 Reserved

I.62 FAR 52.222-50 Combating Trafficking in Persons. (FEB 2009)

I.63 FAR 52.222-54 Employment Eligibility Verification. (JUL 2012) *

I.64 FAR 52.223-3 Hazardous Material Identification and Material Safety Data. (JAN 1997) Alternate I (JUL 1995)

I.65 FAR 52.223-5 Pollution Prevention and Right-to-Know Information. (MAY 2011) *

I.66 FAR 52.223-6 Drug-Free Workplace. (MAY 2001)

I.67 FAR 52.223-7 Notice of Radioactive Materials. (JAN 1997)

(a) The Contractor shall notify the Contracting Officer or designee, in writing, 60 days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall -

(1) Be submitted in writing;

(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

I.68 FAR 52.223-14 Toxic Chemical Release Reporting. (AUG 2003)

- I.69 FAR 52.224-1 Privacy Act Notification. (APR 1984)**
- I.70 FAR 52.224-2 Privacy Act. (APR 1984)**
- I.71 FAR 52.225-1 Buy American Act – Supplies. (FEB 2009)**
- I.72 FAR 52.225-11 Buy American Act - Construction Materials under Trade Agreements. (NOV 2012) ***
- I.73 FAR 52.225-13 Restrictions on Certain Foreign Purchases. (JUN 2008)**
- I.74 Reserved**
- I.75 Reserved**
- I.76 Reserved**
- I.77 Reserved**
- I.78 FAR 52.228-2 Additional Bond Security. (OCT 1997)**
- I.79 Reserved**
- I.80 Reserved**
- I.81 Reserved**
- I.82 FAR 52.230-2 Cost Accounting Standards. (MAY 2012) ***
- I.83 Reserved**
- I.84 FAR 52.232-9 Limitation on Withholding of Payments. (APR 1984)**
- I.85 FAR 52.232-17 Interest. (OCT 2010) ***
- I.86 FAR 52.232-23 Assignment of Claims. (JAN 1986)**
- I.87 FAR 52.232-25 Prompt Payment. (OCT 2008)**
- I.88 FAR 52.232-33 Payment by Electronic Funds Transfer - Central Contractor Registration. (OCT 2003)**
- I.89 FAR 52.233-1 Disputes. (JUL 2002)**
- I.90 FAR 52.233-3 Protest after Award. (AUG 1996)**
- I.91 FAR 52.233-4 Applicable Law for Breach of Contract Claim. (OCT 2004)**
- I.92 FAR 52.236-5 Material and Workmanship. (APR 1984)**
- I.93 FAR 52.236-7 Permits and Responsibilities. (NOV 1991)**

- I.94 FAR 52.237-2 Protection of Government Buildings, Equipment, and Vegetation. (APR 1984)**
- I.95 FAR 52.237-3 Continuity of Services. (JAN 1991)**
- I.96 FAR 52.242-1 Notice of Intent to Disallow Costs. (APR 1984)**
- I.97 FAR 52.242-3 Penalties for Unallowable Costs. (MAY 2001)**
- I.98 FAR 52.242-4 Certification of Final Indirect Costs. (JAN 1997)**
- I.99 FAR 52.242-13 Bankruptcy. (JUL 1995)**
- I.100 FAR 52.244-5 Competition in Subcontracting. (DEC 1996)**
- I.101 FAR 52.244-6 Subcontracts for Commercial Items. (DEC 2010) ***
- I.102 FAR 52.245-1 Government Property. (APR 2012) ***
- I.103 FAR 52.245-9 Use and Charges. (APR 2010) ***
- I.104 Reserved**
- I.105 Reserved**
- I.106 FAR 52.246-25 Limitation of Liability - Services. (FEB 1997)**
- I.107 Reserved**
- I.108 Reserved**
- I.109 Reserved**
- I.110 FAR 52.251-1 Government Supply Sources. (APR 2010) ***
- I.111 FAR 52.252-2 Clauses Incorporated by Reference. (FEB 1998)**

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

- I.112 FAR 52.253-1 Computer Generated Forms. (JAN 1991)**
- I.113 DEAR 952.202-1 Definitions.**
- I.114 DEAR 952.203-70 Whistleblower Protection for Contractor Employees. (DEC 2000)**
- I.115 DEAR 952.204-2 Security Requirements. (MAR 2011) ***
- I.116 DEAR 952.204-70 Classification/Declassification. (SEP 1997)**

I.117 DEAR 952.204-75 Public Affairs. (DEC 2000)

I.118 DEAR 952.208-70 Printing. (APR 1984)

I.119 DEAR 952.209-72 Organizational Conflicts of Interest. (AUG 2009) * – Alternate I

(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 that 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 within 3 years] 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 "task order contract," "Contractor," and "Contracting Officer" shall be appropriately modified to preserve the Government's rights.

(2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the Contractor shall obtain from the proposed subcontractor or consultant the disclosure required by 48 CFR 952.209-8, 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.120 DEAR 952.223-71 Integration of environment, safety, and health into work planning and execution**
- I.121 DEAR 952.223-72 Radiation protection and nuclear criticality. (APR 1984)**
- I.122 DEAR 952.223-75 Preservation of individual occupational radiation exposure records. (APR 1984)**
- I.123 Reserved**
- I.124 DEAR 952.226-74 Displaced Employee Hiring Preference. (JUN 1997)**
- I.125 DEAR 952.231-71 Insurance-Litigation and Claims. (JUL 2013) ***
- I.126 Reserved**
- I.127 DEAR 952.242-70 Technical Direction. (DEC 2000)**
- I.128 DEAR 952.250-70 Nuclear Hazards Indemnity Agreement. (JUN 1996)**
- I.129 DEAR 952.251-70 Contractor employee travel discounts. (AUG 2009) ***
- I.130 Reserved**
- I.131 Reserved**
- I.132 DEAR 970.5223-4 Workplace Substance Abuse Programs at DOE Sites (DEC 2000)**
- I.133 DEAR 970.5227-1 Rights in Data - Facilities (DEC 2000)**
- I.134 DEAR 970.5227-4 Authorization and Consent (AUG 2002)**
- I.135 DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)**
- I.136 DEAR 970.5227-6 Patent Indemnity – Subcontracts (DEC 2000)**
- I.137 DEAR 970.5231-4 Preexisting Conditions – Alternate II (DEC 2000)**
- I.138 Reserved**
- I.139 Reserved**
- I.140 Reserved**
- I.141 Reserved**
- I.142 FAR 52.232-1 Payments (APR 1984)**
- I.143 FAR 52.232-8 Discounts for Prompt Payment (FEB 2002)**

- I.144 Reserved**
 - I.145 Reserved**
 - I.146 Reserved**
 - I.147 Reserved**
 - I.148 Reserved**
 - I.149 Reserved**
 - I.150 Reserved**
 - I.151 Reserved**
 - I.152 Reserved**
 - I.153 Reserved**
 - I.154 Reserved**
 - I.155 Reserved**
 - I.156 Reserved**
 - I.157 Reserved**
 - I.158 Reserved**
 - I.159 FAR 52.243-1 Changes - Fixed-Price. (AUG 1987) – Alternate I (APR 1984)**
 - I.160 FAR 52.243-1 Changes - Fixed-Price. (AUG 1987) - Alternate II (APR 1984)**
 - I.161 FAR 52.243-1 Changes - Fixed-Price. (AUG 1987) - Alternate IV (APR 1984)**
 - I.162 FAR 52.249-2 Termination for Convenience of the Government (Fixed-Price). (MAY 2004)**
 - I.163 FAR 52.249-8 Default (Fixed-Price Supply and Service). (APR 1984)**
 - I.164 FAR 52.216-7 Allowable Cost and Payment. (DEC 2002) as modified by DEAR 952.216-7**
- (a) (3) "30th"
- I.165 Reserved**
 - I.166 Reserved**
 - I.167 Reserved**

I.168 FAR 52.222-2 Payment for Overtime Premiums. (JUL 1990)

Insert "4%" in
(a) "TBD"

I.169 Reserved

I.170 Reserved

I.171 FAR 52.232-22 Limitation of Funds. (APR 1984)

I.172 FAR 52.232-25 Prompt payment. (OCT 2008) -- Alternate I (FEB 2002)

I.173 FAR 52.236-18 Work Oversight in Cost-Reimbursement Construction Contracts. (APR 1984)

I.174 FAR 52.236-19 Organization and Direction of the Work. (APR 1984)

I.175 FAR 52.243-2 Changes - Cost-Reimbursement. (AUG 1987) - Alternate I (APR 1984)

I.176 FAR 52.243-2 Changes - Cost-Reimbursement. (AUG 1987) - Alternate II (APR 1984)

I.177 FAR 52.243-2 Changes - Cost-Reimbursement. (AUG 1987) - Alternate III (APR 1984)

I.178 FAR 52.244-2 Subcontracts. (OCT 2010) - Alternate I (JUN 2007)

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

"Approved purchasing system" means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

"Consent to subcontract" means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

"Subcontract" means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that -

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type;

or

(2) Is fixed-price and exceeds -

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts: "Those over the simplified acquisition threshold unless otherwise authorized by the Administrative Contracting Officer."

(e)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c) or (d) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting -

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason certified cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's certified cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's certified cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The

explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c) or (d) of this clause.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination -

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(i) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations: "N/A"

I.179 FAR 52.249-6 Termination (Cost-Reimbursement). (MAY 2004)

I.180 FAR 52.249-14 Excusable Delays. (APR 1984)

In addition, the following clauses apply:

I.200 FAR 52.203-14 Display of Hotline Posters (APR 2008)

DOE IG Hotline Poster: http://energy.gov/sites/prod/files/igprod/documents/Hotline_poster.pdf

I.201 FAR 52.209-9 Updates of Publicly Available Information Regarding Responsibility Matters. (FEB 2012)

I.202 Far 52.209-10 Prohibition On Contracting With Inverted Domestic Corporations. (May 2012)

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

“Inverted domestic corporation” means a foreign incorporated entity which is treated as an inverted domestic corporation under 6 U.S.C. 395(b), *i.e.*, a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c). An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at 26 U.S.C. 7874.

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

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

(b) If the contractor reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this contract, the Government may be prohibited from paying for Contractor activities performed after the date when it becomes an inverted domestic corporation or subsidiary. The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

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

I.203 FAR 52.215-22 Limitations on Pass-Through Charges – Identification of Subcontract Effort. (OCT 2009)

I.204 FAR 52.215-23 Limitation on Pass-Through Charges. (OCT 2009)

I.205 FAR 52.222-16 Approval of Wage Rates. (FEB 1988)

I.206 FAR 52.222-17 Nondisplacement of Qualified Workers. (JAN 2013)

I.207 FAR 52.222-27 Affirmative Action Compliance Requirements for Construction. (FEB 1999)

- I.208 FAR 52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts. (DEC 2007)**
- I.209 FAR 52.223-10, Waste Reduction Program. (MAY 2011)**
- I.210 FAR 52.223-15 Energy Efficiency in Energy-Consuming Products. (DEC 2007)**
- I.211 FAR 52.223-16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products. (DEC 2007)**
- I.212 FAR 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts. (May 2008)**
 - FAR 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving. (AUG 2011)**
- I.213 FAR 52.223-19 Compliance with Environmental Management Systems. (MAY 2011)**
- I.214 FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement. (DEC 2007)**
- I.215 FAR 52.228-5 Insurance – Work on a Government Installation. (JAN 1997)**
- I.216 FAR 52.228-7 Insurance – Liability to Third Persons. (MAR 1996)**
- I.217 FAR 52.230-6 Administration of Cost Accounting Standards. (JUNE 2010)**
- I.218 FAR 52.243-6 Change Order Accounting. (APR 1984)**

The Contracting Officer may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the Contracting Officer or the matter is conclusively disposed of in accordance with the Disputes clause.

I.219 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

TBD

- I.220 FAR 52.247-67 Submission of Transportation Documents for Audit. (FEB 2006)**
- I.221 FAR 52.248-1 Value Engineering. (OCT 2010)**
- I.222 FAR 52.249-6 Termination (Cost-Reimbursement), Alternate I. (SEPT 1996)**
- I.223 FAR 52.251-2 Interagency Fleet Management System Vehicles and Related Services. (JAN 1991)**
- I.224 DEAR 952.204-2 Security Requirements. (JUN 2009)**
- I.225 DEAR 952.204-77 Computer Security. (AUG 2006)**
- I.226 DEAR 952.215-70 Key Personnel. (DEC 2000)**
- I.227 DEAR 952.223-78 Sustainable Acquisition Program. (OCT 2010)**
- I.228 DEAR 952.227-82 Rights To Proposal Data. (APR 1994)**
- I.229 DEAR 970-5204-3 Access to and Ownership of Records. (JUL 2005)**
- I.230 DEAR 970.5215-3 Conditional Payment Of Fee, Profit, Or Incentives—Facility Management Contracts. (AUG 2009)**

(a) General.

(1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon—

(i) The Contractor's or Contractor employees' compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H), which includes worker safety and health (WS&H), including performance under an approved Integrated Safety Management System (ISMS); and

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

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

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

(4) If the Contractor does not meet the performance requirements of this contract relating to ES&H or to the safeguarding of Restricted Data and other classified information during any performance evaluation period established under the contract pursuant to the clause of this contract entitled, "Total Available Fee: Base Fee Amount and Performance Fee Amount,"

otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by the contracting officer.

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

(2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26% nor greater than 100% of the amount of earned fee, fixed fee, profit, or the Contractor's share of cost savings for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure.

(3) In determining the amount of the reduction and the applicability of mitigating factors, the contracting officer must consider the Contractor's overall performance in meeting the ES&H or security requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range (see 48 CFR 970.1504-1-2). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ES&H only).

(i) Degree of control the Contractor had over the event or incident.

(ii) Efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of: ES&H and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ES&H standards are routinely practiced (e.g., Voluntary Protection Program, ISO 14000).

(vi) Event caused by "Good Samaritan" act by the Contractor (e.g., offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs).

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

(4)(i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a contractor during an evaluation period may be reduced in accordance with this clause if it is determined that a performance failure warranting a reduction under this clause occurs within the evaluation period.

(ii) The amount of reduction under this clause, in combination with any reduction made under any other clause in the contract, shall not exceed the amount of fee, fixed fee, profit, or the Contractor's share of cost savings that is otherwise earned during the evaluation period.

(iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by the Contracting Officer or fee determination official as otherwise payable based on the Contractor's performance during the evaluation period. Where the contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.

(iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practical after becoming aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the Contractor has received for fee, fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned (provisionally or otherwise), the Contractor shall immediately return the excess to the Government. (What the Contractor "has earned" reflects any reduction made under this or any other clause of the contract.)

(v) At the end of the contract—

(A) The Government will pay the Contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned exceeds the sum of the payments the Contractor has received; or

(B) The Contractor shall return to the Government the amount by which the sum of the payments the Contractor has received exceeds the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned. (What the Contractor "has earned" reflects any reduction made under this or any other clause of the contract.)

(c) Environment, Safety and Health (ES&H). Performance failures occur if the Contractor does not comply with the contract's ES&H terms and conditions, including the DOE approved Contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:

(1) First Degree: Performance failures that are most adverse to ES&H. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the Contractor's ISMS. The following performance failures or performance failures of similar import will be considered first degree.

(i) Type A accident (defined in DOE Order 225.1A).

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

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

(i) Type B accident (defined in DOE Order 225.1A).

(ii) Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.

(iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.

(3) Third Degree: Performance failures that reflect a lack of focus on improving ES&H. They include failures to comply with an approved ISMS that result in potential breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:

(i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal) oversight and/or reported per DOE Order 231.1-2 requirements; or internal oversight of DOE Order 440.1A requirements.

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

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

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

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

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

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

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

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

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (d)(1)(iii) of this clause).

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

(3) **Third Degree:** Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance

failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.
- (ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.
- (iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable.
- (iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

I.231 DEAR 970.5223-1 Integration Of Environment, Safety, And Health Into Work Planning And Execution. (DEC 2000)

(a) For the purposes of this clause,

- (1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and
- (2) Employees include subcontractor employees.

(b) In performing work under this contract, the Contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Contractor shall exercise a degree of care commensurate with the work and the associated hazards. The Contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the Contractor's work planning and execution processes. The Contractor shall, in the performance of work, ensure that:

- (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Contractor and subcontractor employees managing or supervising employees performing work.
- (2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
- (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
- (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
- (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide

adequate assurance that employees, the public, and the environment are protected from adverse consequences.

(6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.

(7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the Contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the Contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

(c) The Contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the Contractor will—

- (1) Define the scope of work;
- (2) Identify and analyze hazards associated with the work;
- (3) Develop and implement hazard controls;
- (4) Perform work within controls; and
- (5) Provide feedback on adequacy of controls and continue to improve safety management.

(d) The System shall describe how the Contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Contractor will measure system effectiveness.

(e) The Contractor shall submit to the Contracting Officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the Contracting Officer. Guidance on the preparation, content, review, and approval of the System will be provided by the Contracting Officer. On an annual basis, the Contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the Contractor's business processes for work planning, budgeting, authorization, execution, and change control.

(f) The Contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract entitled "Laws, Regulations, and DOE Directives." The Contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

(g) The Contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Contractor fails to provide resolution or if, at any time, the Contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Contracting Officer may issue an order stopping work in whole or in part. Any stop work order issued by a contracting officer under this clause (or issued by the Contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the Contracting Officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Contracting Officer. The Contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(h) Regardless of the performer of the work, the Contractor is responsible for compliance with the ES&H requirements applicable to this contract. The Contractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the Contractor's compliance with the requirements.

(i) The Contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or-leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the Contractor may choose not to require the subcontractor to submit a Safety Management System for the Contractor's review and approval.

I.232 DEAR 970.5223-6 Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management. (OCT 2010)

I.233 DEAR 970.5227-8 Refund Of Royalties. (AUG 2002)

I.234 DEAR 970.5227-9 Notice Of Right To Request Patent Waiver. (DEC 2000)

I.235 DEAR 970.5227-10 Patent Rights - Management And Operating Contracts, Nonprofit Organization Or Small Business Firm Contractor. (AUG 2002)

I.236 DEAR 970.5227-11 Patent Rights - Management And Operating Contracts, For-Profit Contractor, Non-Technology Transfer. (DEC 2000)

I.237 DEAR 970.5244-1 Contractor Purchasing System. (JAN 2013)

(a) *General.* The Contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause and 48 CFR subpart 970.44. The Contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to the Department of Energy (DOE) in accordance with 48 CFR 970.4401-1. The Contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The Contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the Contractor submit for approval any or all purchases under this contract. The Contractor shall not purchase any item or service, the purchase of which is expressly prohibited by the written direction of DOE, and shall use such special and directed sources as may be expressly required by the DOE Contracting Officer. DOE will conduct

periodic appraisals of the Contractor's management of all facets of the purchasing function, including the Contractor's compliance with its approved system and methods. Such appraisals will be performed through the conduct of Contractor Purchasing System Reviews in accordance with 48 CFR subpart 44.3, or, when approved by the Contracting Officer, through the Contractor's participation in the conduct of the Balanced Scorecard performance measurement and performance management system. The Contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (y) of this clause.

(b) *Acquisition of utility services.* Utility services shall be acquired in accordance with the requirements of subpart 970.41.

(c) *Acquisition of Real Property.* Real property shall be acquired in accordance with 48 CFR subpart 917.74.

(d) *Advance Notice of Proposed Subcontract Awards.* Advance notice shall be provided in accordance with 48 CFR 970.4401-3.

(e) *Audit of Subcontractors.*

(1) The Contractor shall provide for—

(i) Periodic post-award audit of cost-reimbursement subcontractors at all tiers; and

(ii) Audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.

(2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The Contractor shall provide, in appropriate cases, for the timely involvement of the Contractor and the DOE Contracting Officer in resolution of subcontract cost allowability.

(3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE Contracting Officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the Contractor.

(4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402-3 and 48 CFR 31.205-26(e).

(f) *Bonds and Insurance.*

(1) The Contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102-2(a) for all fixed-priced and unit-priced construction subcontracts in excess of \$100,000. The Contractor shall consider the use of performance bonds in fixed-price non-construction subcontracts, where appropriate.

(2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of \$100,000, a payment bond shall be obtained on Standard Form 25A modified to name the Contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).

(3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts greater than \$25,000, but not greater than \$100,000, the Contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

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

(g) *Buy American.* The Contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225-1 and 48 CFR 52.225-9. The Contractor shall forward determinations of non-availability of individual items to the DOE Contracting Officer for approval. Items in excess of \$100,000 require the prior concurrence of the Head of Contracting Activity. If, however, the Contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the Contractor to make determinations of non-availability for individual items valued at \$100,000 or less.

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

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

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

(3) *Prevention of Conflict of Interest.*

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

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

(iii) The Contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

(i) *Contractor-Affiliated Sources.* Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402-3.

(j) *Contractor-Subcontractor Relationship.* The obligations of the Contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the Contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the Contractor, and shall not bind or purport to bind the Government.

(k) *Government Property.* The Contractor shall establish and maintain a property management system that complies with criteria in 48 CFR 970.5245-1, Property, and 48 CFR 52.245-1, Government Property.

(l) *Indemnification.* Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement Executive.

(m) *Leasing of Motor Vehicles.* Contractors shall comply with 48 CFR subpart 8.11 and 48 CFR subpart 908.11.

(n) [Reserved]

(o) *Management, Acquisition and Use of Information Resources.* Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.

(p) *Priorities, Allocations and Allotments.* Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.

(q) *Purchase of Special Items.* Purchase of the following items shall be in accordance with the following provisions of 48 CFR subpart 8.5, 48 CFR subpart 908.71, Federal Management Regulation 41 CFR part 102, and the Federal Property Management Regulation 41 CFR chapter 101:

- (1) Motor vehicles—48 CFR 908.7101
- (2) Aircraft—48 CFR 908.7102
- (3) Security Cabinets—48 CFR 908.7106
- (4) Alcohol—48 CFR 908.7107
- (5) Helium—48 CFR subpart 8.5
- (6) Fuels and packaged petroleum products—48 CFR 908.7109
- (7) Coal—48 CFR 908.7110

(8) Arms and Ammunition—48 CFR 908.7111

(9) Heavy Water—48 CFR 908.7121(a)

(10) Precious Metals—48 CFR 908.7121(b)

(11) Lithium—48 CFR 908.7121(c)

(12) Products and services of the blind and severely handicapped—41 CFR 101-26.701

(13) Products made in Federal penal and correctional institutions—41 CFR 101-26.702

(r) *Purchase versus Lease Determinations.* Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease versus purchase determinations. Such determinations shall be made—

(1) At time of original acquisition;

(2) When lease renewals are being considered; and

(3) At other times as circumstances warrant.

(s) *Quality Assurance.* Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.

(t) *Setoff of Assigned Subcontractor Proceeds.* Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.

(u) *Strategic and Critical Materials.* The Contractor may use strategic and critical materials in the National Defense Stockpile.

(v) *Termination.* When subcontracts are terminated as a result of the termination of all or a portion of this contract, the Contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the Contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the Contracting Officer.

(w) *Unclassified Controlled Nuclear Information.* Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR part 1017.

(x) *Subcontract Flowdown Requirements.* In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the Contractor shall include the following clauses in subcontracts, as applicable:

(1) Davis-Bacon clauses prescribed in 48 CFR 22.407.

- (2) Foreign Travel clause prescribed in 48 CFR 952.247-70.
- (3) Counterintelligence clause prescribed in 48 CFR 970.0404-4(a).
- (4) Service Contract Act clauses prescribed in 48 CFR 22.1006.
- (5) State and local taxes clause prescribed in 48 CFR 970.2904-1.
- (6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).
- (y) *Legal Services*. Contractor purchases of litigation and other legal services are subject to the requirements in 10 CFR part 719 and the requirements of this clause.

Amendment 003 - Conformed