

FLUOR FERNALD, INC.

GENERAL PROVISIONS

FOR

FIXED – PRICE CONSTRUCTION CONTRACTS

March 15, 2001

All references to the Federal Acquisition Regulation (FAR) and the Department of Energy Acquisition Regulation (DEAR) clause contained herein indicate the basic content of of the clauses contained in the referenced clause, except that the clauses have been changed to reflect the proper parties to this contract.

General Provisions Fixed-Price Construction

PART 3- CONTRACT CLAUSES

(FIXED-PRICE CONSTRUCTION)

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PART 3 - CONTRACT CLAUSES
(FIXED PRICE - CONSTRUCTION)

1 DEFINITIONS. [FAR 52.202-1 (OCT 1995)]

(a) " Head of Agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.

(b) "Commercial component" means any component that is a commercial item.

(c) "Commercial item" means -

(1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that -

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for -

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (c)(1), (2),

(3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services -

(i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) "Component" means any item supplied to the Federal Government as part of an end item or of another component.

(e) "Nondevelopmental item" means -

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (e)(1) or (e)(2) solely because the item is not yet in use.

(f) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate Federal Government contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(g) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(h) The term "DOE" means the Department of Energy and "FERC" means the Federal Energy Regulatory Commission.

2 RESERVED.

3 RESERVED.

4 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT.

(a) In the event the total price of this contract exceeds \$100,000 and except as provided in (b) of this clause, the Seller shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) of this clause does not preclude the Seller from asserting rights that are otherwise authorized by law or regulation.

(c) The Seller agrees to incorporate the substance of this clause, including this paragraph, in all subcontracts under this contract which exceed \$100,000.

5 ANTI-KICKBACK PROCEDURES.

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract..

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

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

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

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

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

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

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

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from -

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

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

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

(c) (1) RESERVED.

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

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

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

(5) The Seller agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

6 RESERVED.

7 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY.

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

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

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

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

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

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

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

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

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

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

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

(c) The Government may, at its election, reduce a prime Contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced. In the event the Government makes such a reduction Fluor Fernald shall reduce the Seller's price or fee by a like amount.

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

8 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS.

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

(1) The awarding of any Federal contract.

(2) The making of any Federal grant.

(3) The making of any Federal loan.

(4) The entering into of any cooperative agreement.

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

(3) A special Government employee, as defined in section 202, Title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions. (1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees. (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a

payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action -

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and technical services. (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of -

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable.

However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

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

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

(1) The Seller shall file a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if the Seller has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) In the event the total price of this contract exceeds \$100,000, and according to the procedures set forth in (4) below, the Seller shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes -

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Seller shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) Agreement. The Seller agrees not to make any payment prohibited by this clause.

(e) Penalties.

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

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

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

9..RESERVED.

10 RESERVED.

11 52.215-2 AUDIT AND RECORDS - NEGOTIATION.

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Seller shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) Cost or pricing data. If the Seller has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Seller's records, including computations and projections, related to -

(1) The proposal for the contract, subcontract, or modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the contract, subcontract, or modification; or

(4) Performance of the contract, subcontract or modification.

(d) 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 Seller's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

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

(e) Reports. If the Seller is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating -

(1) The effectiveness of the Seller's policies and procedures to produce data compatible with the objectives of these reports; and

(2) The data reported.

(f) Availability. The Seller shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition -

(1) If this contract is completely or partially terminated, the Seller shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Seller shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Seller shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and -

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

12 RESERVED.

13 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

(a) In the event the total price or estimated or expected payments to the Seller exceed the threshold for submission of cost or pricing data at FAR 15.403-1 and no exception to such submission stated at FAR 15.403-1 applies, if any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because:

(1) The Seller or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Seller cost or pricing data that were not complete, accurate, and current as certified in the Seller's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which:

(1) The actual subcontract; or

(2) The actual cost to the Seller, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Seller; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c) (1) If the Contracting Officer or Fluor Fernald determines under paragraph (a) of this clause that a price or cost reduction should be made, the Seller agrees not to raise the following matters as a defense:

(i) The Seller or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer or Fluor Fernald should have known that the cost or pricing data in issue were defective even though the Seller or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer or Fluor Fernald.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Seller or subcontractor did not submit a Certification of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (c)(2)

(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer or Fluor Fernald based upon the facts shall be allowed against the amount of the contract price reduction if:

(A) The Seller certifies to Fluor Fernald that, to the best of the Seller's knowledge and belief, the Seller is entitled to the offset in the amount requested; and

(B) The Seller proves that the cost or pricing data were available before the As of @ date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if:

(A) The understated data were known by the Seller to be understated before the As of @ date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government or Fluor Fernald proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the As-of-date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Seller shall be liable to and shall pay the United States or Fluor Fernald at the time such overpayment is repaid:

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Seller to the date the Government is repaid by the Contractor or Seller at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Seller or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

14 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA--MODIFICATIONS]

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Seller or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Seller cost or pricing data that were not complete, accurate, and current as certified in the Seller's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which-

(1) The actual subcontract; or

(2) The actual cost to the Seller, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Seller; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d) (1) If the Contracting Officer or Fluor Fernald determines under paragraph (b) of this clause that a price or cost reduction should be made, the Seller agrees not to raise the following matters as a defense:

(i) The Seller or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer or Fluor Fernald should have known that the cost or pricing data in issue were defective even though the Seller or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer or Fluor Fernald.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Seller or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(i) Except as prohibited by subdivision (d)(2)

(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer or Fluor Fernald based upon the facts shall be allowed against the amount of a contract price reduction if--

(A) The Seller certifies to Fluor Fernald that, to the best of the Seller's knowledge and belief, the Seller is entitled to the offset in the amount requested; and

(B) The Seller proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if--

(A) The understated data were known by the Seller to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government or Fluor Fernald proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Seller shall be liable to and shall pay the United States or Fluor Fernald at the time such overpayment is repaidB

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Seller to the date the Government is repaid by the Contractor or Seller at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Seller or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

15 52.215-13 SUBCONTRACTOR COST OR PRICING DATA--MODIFICATIONS

(a) The requirements of paragraphs (b) and (c) of this clause shall--

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Seller shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(c) The Seller shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Seller shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

16 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS.

(a) As provided at FAR 15.408(g), in the event cost or pricing data is required by terms of the solicitation of this contract or any preaward or postaward cost determinations are subject to Part 31 of the FAR, the Seller shall promptly notify Fluor Fernald in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.

(b) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) for contracts and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

(c) For all other situations where assets revert to the Seller, or such assets are constructively received by it for any reason, the Seller shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to FAR Subpart 31.2.

(d) The Seller shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

17 RESERVED..

18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS

As provided at FAR 15.408(j), in the event cost or pricing data is required by terms of the solicitation of this contract or any preaward or postaward cost determinations are subject to Part 31 of the FAR, the Seller shall promptly notify Fluor Fernald and the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Seller or are constructively received by it under a plan termination or otherwise, the Seller shall make a refund or give a credit to the Government through Fluor Fernald for its equitable share as required by FAR 31.205-6(o)(6). The Seller shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirements of FAR 15.408(j).

19 NOTIFICATION OF OWNERSHIP CHANGES

(a) As provided at FAR 15.408(k), in the event cost or pricing data is required by terms of the solicitation of this contract or any preaward or postaward cost determinations are subject to Part 31 of the FAR, the Contractor shall make the following notifications in writing:

(1) When the Seller 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 Seller shall notify Fluor Fernald and the Administrative Contracting Officer (ACO) within 30 days.

(2) The Seller shall also notify Fluor Fernald and 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) In the event the provisions of (a) above apply, the Seller shall also--

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

(2) Provide Fluor Fernald and the ACO or designated representative 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 Seller's ownership changes; and

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

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

20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA--MODIFICATIONS

(a) Exceptions from cost or pricing data.

(1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Seller may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer and Fluor Fernald may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable--

(i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to Fluor Fernald or the contracting office.

(ii) Information on modifications of contracts or subcontracts for commercial items.

(A) If--

(1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

(2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Seller may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Seller shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include--

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Seller grants Fluor Fernald and the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Seller's determination of the prices to be offered in the catalog or marketplace.

(b) Requirements for cost or pricing data. If the Seller is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Seller shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Seller shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

(c) Submit the cost portion of the proposal via the following electronic media: Any spreadsheets or mathematical computation using Microsoft Excel97. Any written verbiage will be submitted using Corel WordPerfect 8 or Microsoft Word 97.

21 RESERVED.

22 RESERVED

23 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS

(a) It is the policy of the United States that small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(b) The Seller hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Seller further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Seller's compliance with this clause.

(c) Definitions. As used in this contract

(1) Small business concern means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(2) HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(3) Small business concern owned and controlled by socially and economically disadvantaged individuals and small disadvantaged business concern mean a small business concern that represents, as part of its offer that--

(i) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;

(ii) No material change in disadvantaged ownership and control has occurred since its certification;

(iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

(4) Small business concern owned and controlled by women means a small business concern--

(i) Which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(ii) Whose management and daily business operations are controlled by one or more women.

(d) Contractors and Sellers acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a HUBZone small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women.

24 SMALL BUSINESS SUBCONTRACTING PLAN

(a) This clause applies in the event the total price of this contract exceeds \$500,000. Notwithstanding the foregoing, this clause does not apply to small business concerns regardless of the value of the contract.

(b) Definitions. As used in this clause --

Commercial item means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

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

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

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

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

(c) The Seller, upon request by Fluor Fernald, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the Seller is submitting an individual contract plan, the plan must separately address subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by Fluor Fernald. Failure to submit and negotiate the subcontracting plan shall make the Seller ineligible for award of a contract.

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

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The Seller shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of -

(i) Total dollars planned to be subcontracted for an individual contract plan; or the Offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

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

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

(iv) Total dollars planned to be subcontracted to small disadvantaged business concerns; and

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

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

(i) Small business concerns;

(ii) HUBZone small business concerns;

(iii) Small disadvantaged business concerns; and

(iv) Women-owned small business concerns.

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

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

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

(i) Small business concerns;

(ii) HUBZone small business concerns;

(iii) Small disadvantaged business concerns; and

(iv) Women-owned small business concerns.

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

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

(9) Assurances that the Seller will include the clause of this contract entitled "Utilization of Small Business Concerns: in all subcontracts that offer further subcontracting opportunities, and that the Seller will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Seller will --

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the Seller with the subcontracting plan;

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms or as provided in agency regulations and in paragraph (j) of this clause; and

(iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the Offeror's efforts to locate small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicatingB

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

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

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

(D) Whether women-owned small business concerns were solicited and, if not, why not; and

(E) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact--

(A) Trade associations;

(B) Business development organizations; and

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources.

(v) Records of internal guidance and encouragement provided to buyers through--

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the Seller to the Government, including the name, address, and business size of each subcontractor. Sellers having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Seller shall perform the following functions:

(1) Assist small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Seller's lists of potential small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all Amake-or-buy@ decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Seller's subcontracting plan.

(f) A master subcontracting plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Seller by this clause; provided -

(1) The master plan has been approved;

(2) The Seller ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to Fluor Fernald; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for Contractors furnishing commercial items. The commercial plan shall relate to the Offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime Contractor is supplying a commercial item.

(h) Prior compliance of the Seller with other such subcontracting plans under previous contracts will be considered by Fluor Fernald in determining the responsibility of the Seller for award of the contract.

(i) The failure of the Seller or subcontractor to comply in good faith with -

(1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(j) The Seller shall submit the following reports:

(1) Standard Form 294, Subcontracting Report for Individual Contracts. This report shall be submitted to Fluor Fernald semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.

(2) Standard Form 295, Summary Subcontract Report. This report encompasses all the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Seller's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by Standard Industrial Classification (SIC) Major Group. For a commercial plan, the Seller may obtain from each of its subcontractors

a predominant SIC Major Group and report all awards to that subcontractor under its predominant SIC Major Group.

25 RESERVED.

26 RESERVED.

27 RESERVED

28 RESERVED

29 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES

If the Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Seller shall immediately give notice, including all relevant information, to Fluor Fernald.

30 FAR 52.222-3 CONVICT LABOR (APR 1984)

The Seller agrees not to employ any person undergoing sentence of imprisonment in performing this contract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973

31 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION

(a) Overtime requirements. In the event the total price of this contract exceeds \$100,000 neither the Seller nor any subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Seller and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Seller and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Seller or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of the Seller or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) Payrolls and basic records.

(1) The Seller or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) Subcontracts. The Seller shall insert in any subcontracts exceeding \$100,000 the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts.

32 52.222-6 DAVIS BACON ACT

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Seller and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis Bacon poster (WH1321) shall be posted at all times by the Seller and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b) (1) The Contracting Officer through FLUOR FERNALD shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer through FLUOR FERNALD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Seller and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer through FLUOR FERNALD agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30 day period that additional time is necessary.

(3) In the event the Seller, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30 day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Seller shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Seller does not make payments to a trustee or other third person, the Seller may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Seller, that the applicable standards of the Davis Bacon Act have been met. The Secretary of Labor may require the Seller through FLUOR FERNALD to set aside in a separate account assets for the meeting of obligations under the plan or program.

33 FAR 52.222-7 WITHHOLDING OF FUNDS (FEB 1988)

FLUOR FERNALD shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Seller under this contract or any other Federal contract with the same Seller, or any other Federally assisted contract subject to Davis Bacon prevailing wage requirements, which is held by the same Seller, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Seller or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or

working on the site of the work, all or part of the wages required by the contract, FLUOR FERNALD may, after written notice to the Seller, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

34 FAR 52.222-8 PAYROLLS AND BASIC RECORDS (FEB. 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Seller during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis Bacon Act, the Seller shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Sellers employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b) (1) The Seller shall submit weekly for each week in which any contract work is performed a copy of all payrolls to FLUOR FERNALD.

The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH 347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Seller is responsible for the submission of copies of payrolls by all subcontractors.

35 FAR 52.222-9 APPRENTICES AND TRAINEES (FEB 1988)

(a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Seller as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Seller is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the

Seller's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Seller will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Seller will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

36..FAR 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

The Seller shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

37 FAR 52.222-1 SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)

(a) The Seller shall insert in any subcontracts the clauses entitled Davis Bacon Act, Contract Work Hours and Safety Standards Act Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination Debarment, Disputes Concerning Labor Standards, Compliance with Davis Bacon and Related Act Regulations, and Certification of Eligibility, and such other clauses as FLUOR FERNALD may, by appropriate instructions, require, and also a clause requiring Seller to include these clauses in any lower tier subcontracts. The Seller shall be responsible for compliance by any lower tier subcontractor with all the contract clauses cited in this paragraph.

(b) (1) Within 14 days after award of the contract, the Seller shall deliver to FLUOR FERNALD a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Seller shall deliver to FLUOR FERNALD an updated completed SF 1413 for such additional subcontract.

38 FAR 52.222-12 CONTRACT TERMINATION DEBARMENT (FEB 1988)

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act - Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance With Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.12.

39 FAR 52.222-13 COMPLIANCE WITH DAVIS BACON AND RELATED ACT REGULATIONS (FEB 1988)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

40 FAR 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Seller (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

41 FAR 52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)

(a) By entering into this contract, the Seller certifies that neither it (nor he or she) nor any person or firm who has an interest in the Seller's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

42 EQUAL OPPORTUNITY.

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Seller has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) of this clause. Upon request, the Seller shall provide information necessary to determine the applicability of this clause.

(b) During performance of this contract, the Seller agrees as follows:

(1) The Seller shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Seller to extend a publicly announced preference in employment to Indians living on or

near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Seller shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to -

(i) Employment;

(ii) Upgrading;

(iii) Demotion;

(iv) Transfer;

(v) Recruitment or recruitment advertising;

(i) Layoff or termination;

(ii)

(vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship.

(3) The Seller shall post in conspicuous places available to employees and applicants for employment the notices to be provided by Fluor Fernald or the Contracting Officer that explain this clause.

(4) The Seller shall, in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Seller shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by Fluor Fernald or the Contracting Officer advising the labor union or workers' representative of the Seller's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Seller shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Seller shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Seller shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Seller has filed within the 12 months preceding the date of contract award, the Seller shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Seller shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Seller shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Seller is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or

suspended in whole or in part and the Seller may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Seller as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Seller shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Seller shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Seller becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Seller may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

43 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA.

(a) Definitions. As used in this clause -

All employment openings includes all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

Appropriate office of the State employment service system means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

Positions that will be filled from within the Contractor's organization means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

Veteran of the Vietnam era means a person who -

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released there from with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) General. In the event the estimated or expected payments to the Seller exceed \$10,000, and unless exempted by rules, regulations, orders of the Secretary,

(1) regarding any position for which the employee or applicant for employment is qualified, the Seller shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Seller agrees to take affirmative action to employ, advance in

employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) Also in the event the estimated or expected payments to the Seller exceed \$10,000, the Seller agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended, including those provisions set forth in (c) through (e) below.

(c) Listing openings.

(1) The Seller agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Seller facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all openings with the appropriate office of the State employment service.

(3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Seller from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Seller becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Seller is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Seller may advise the State system when it is no longer bound by this contract clause.

(d) Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(e) Postings.

(1) The Seller agrees to post employment notices stating -

(i) The Seller's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.

(3) The Seller shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Seller is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

(f) Noncompliance. If the Seller does not comply with the requirements of this clause, if applicable, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Seller shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Seller shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

44 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES

(a) General. In the event the total price of this contract exceeds \$10,000, and unless exempted by rules, regulations or orders of the Secretary, (1) regarding any position for which the employee or applicant for employment is qualified, the Seller shall not discriminate against any employee or applicant because of physical or mental disability. The Seller agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as:

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Seller;

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Seller, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) Also in the event the estimated or expected payments to the Seller exceed \$10,000, the Seller agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended, including the provisions of (b) below.

(b) Postings.

(1) The Seller agrees to post employment notices stating:

(i) The Seller's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Seller shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Seller may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Seller shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Seller is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance. If the Seller does not comply with the applicable requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Seller shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Seller shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

45 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

(a) In the event the total price of this contract is \$10,000 or more and unless exempted by rules, regulations or orders of the Secretary, the Seller shall report at least annually, as required by the Secretary of Labor, on:

(1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the Seller by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors and Sellers may select an ending date:

(1) As of the end of any pay period during the period January through March 1st of the year the report is due, or

(2) As of December 31, if the Seller has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor and Seller subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Seller. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) Subcontracts. The Seller shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

46 RESERVED.

47 RESERVED.

48 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The Seller must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

MATERIAL

See Department of Energy- Fernald Environmental Management Project (DOE-FEMP) Material Safety Data Sheet (MSDS) database.

(c) This list must be updated during performance of the contract whenever the Seller determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful Seller agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful Seller is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful Seller being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Seller shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government or Fluor Fernald shall relieve the Seller of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Seller from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to -

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(i) Except as provided in paragraph (i)(2), the Seller shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Seller shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment.

Alternatively, the Seller is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer or Fluor Fernald.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Seller shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

49 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION. [As derived from FAR 52.223-5 (APR 1998

(a) Executive Order 12856 of August 3, 1993, requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(b) The Seller shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA; the emergency notice requirements of Section 304 of EPCRA; the list of Material Safety Data Sheets required by Section 311 of EPCRA; the emergency and hazardous chemical inventory forms of Section 312

of EPCRA; the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA; and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856.

50 NOTICE OF RADIOACTIVE MATERIALS

(a) The Seller shall notify Fluor Fernald or its designee, in writing, 30 days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Seller may request that Fluor Fernald or its 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 Fernald Environmental Management Project 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.

51 RESERVED.

52 RESERVED.

53 RESERVED.

54 TOXIC CHEMICAL RELEASE REPORTING.

(a) In the event the total price of this contract (including all options) exceeds \$100,000, and unless otherwise exempt, the Seller, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Seller owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if -

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in section 19.102 of the Federal Acquisition Regulation (FAR); or

(5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(c) If the Seller has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt -

(1) The Seller shall notify Fluor Fernald; and

(2) The Seller, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall -

(i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and

(ii) Continue to file the annual Form R for the life of the contract for such facility.

(d) Fluor Fernald may terminate this contract or take other action as appropriate, if the Seller fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Reserved.

55 RESERVED.

56 PRIVACY ACT.

(a) In the event this contract requires the design, development, or operation of a system of records as described in (1) below, the Seller agrees to -

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies -

(i) The systems of records; and

(ii) The design, development, or operation work that the Contractor is to perform;

(2) Include the Privacy Act notification contained at FAR 52.224-1 in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Seller is considered to be an employee of the agency.

(c) (1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

57 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES.

(a) The Seller shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

(b) The Seller shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.

(c) The Seller shall insert this clause, including this paragraph (c), in all subcontracts.

58 RESERVED

59 RESERVED.

60 RESERVED.

61 RESERVED.

62 52.230-2 COST ACCOUNTING STANDARDS.]

(a) In the event the total price of this contract exceeds \$500,000, unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, and unless this contract was awarded by sealed

bidding, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Seller, in connection with this contract, shall -

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Seller's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Seller and which contain a Cost Accounting Standards (CAS) clause. If the Seller has notified Fluor Fernald and the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Seller's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Seller has submitted cost or pricing data, on the date of final agreement on price as shown on the Seller's signed certificate of current cost or pricing data. The Seller shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Seller. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) (i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Seller is required to make to the Seller's established cost accounting practices.

(ii) Negotiate with Fluor Fernald or its designee to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Seller or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Seller made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to Fluor Fernald.

(b) Reserved..

(c) The Seller shall permit any authorized representatives of Fluor Fernald or the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Seller shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

63 ADMINISTRATION OF COST ACCOUNTING STANDARDS.

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Seller shall take the steps outlined in paragraphs (a) through (g) of this clause:

(a) Submit to Fluor Fernald and the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed fee, etc.) and other Seller business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

(1) For any change in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards - Educational Institution; within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.

(2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards - Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

(3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(5) at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards - Educational Institution; or by subparagraph (a)(4) at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices):

(i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or

(ii) In the event of Seller disagreement with the initial finding of noncompliance, within 60 days of the date the Seller is notified by the Contracting Officer of the determination of noncompliance.

(b) After an ACO, or cognizant Federal agency official, determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.

(1) Cost impact proposals submitted for changes in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards - Educational Institution; shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clauses entitled Cost Accounting Standards or Cost Accounting Standards - Educational Institution, which have an award date before the effective date of that standard or cost principle.

(2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards - Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; shall identify all contracts and subcontracts containing the clauses at FAR 52.230-2, Cost Accounting Standards, FAR 52.230-5, Cost Accounting Standards - Educational Institution, and FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices.

(3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards - Educational Institution; or by subparagraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.

(c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Contracting Officer.

(d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the clauses at FAR 52.230-2 and 52.230-5; or with subparagraphs (a)(3) or (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-3.

(e) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5 --

(1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used);

(2) Include the substance of this clause in all negotiated subcontracts; and

(3) Within 30 days after award of the subcontract, submit the following information to the Seller's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(f) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.

(g) For subcontracts containing the clauses at FAR 52.230-2 or 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

64 RESERVED.

65 INTEREST.

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Seller to Fluor Fernald or the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph

(b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date Fluor Fernald or the Government transmits to the Seller a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Seller stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

66 RESERVED.

67 RESERVED.

68 RERVED.

69 DISPUTES.

(a) All disputes arising under or relating to this contract shall be resolved pursuant to the procedures of this clause. Any claim for the payment of a sum certain or other relief arising

under or related to this contract shall be made in writing by the claiming party to the other. Claims shall be subject to a written decision by the party against whom the claim is made within a reasonable time of submission. The Seller agrees to continue to perform this contract pending final resolution of any claims. The Seller shall have no right to stop work or otherwise fail to perform this contract in spite of pending claims, and the seller limits its rights to relief to equitable adjustment of the contract price and/or schedule. Negotiated resolution of all claims shall be memorialized in contract modifications. If a claim cannot be settled through negotiation between the parties, the parties agree to submit the claim to mediation by a third party mediator as agreed to by the parties, or upon the failure to agree, as selected by the American Arbitration Association under its Commercial Mediation Rules. Cost of the mediator and place of mediation shall be borne equally by the parties. If a negotiated settlement cannot be reached through mediation, the parties agree to consider submitting those claims to binding arbitration according to terms and conditions as may be agreed upon by the parties. Fluor Fernald shall not be liable for, and the Seller waives any claim or potential claim of the seller which was not made by the seller in accordance with the provisions of this clause prior to final payment.

(b) Irrespective of the place of performance, this contract will be construed and interpreted according to the Federal law of Government contracts as enunciated and applied by Federal Courts, Boards of Contract Appeals and quasi-judicial agencies of the Federal Government. Consistent with that law, interest, if any, awarded pursuant to the provisions of this clause shall be simple interest computed at the rate established by the Secretary of the Treasury as provided in the Contract Disputes Act of 1978 applicable to the period for which interest is awarded. In no case shall interest be awarded for a period commencing earlier than the time a complaint is filed in the court of competent jurisdiction or, if, prior to the time a complaint is filed, arbitration is agreed upon, the date of the arbitration agreement. To the extent the Federal law of Government contracts is not dispositive of any issue arising under or relating to this contract, the law of the state of Ohio shall apply. In the event either party hereto files suit on account of any issue arising under or relating to this contract, each party consents to that action being filed in the court of competent jurisdiction in and for Hamilton County, Ohio.

70 RESERVED.

71 RERERVED

72 RESERVED.

73 RESERVED..

74 RESERVED.

75 RESERVED.

76 RESERVED.

77 BANKRUPTCY.

In the event the Seller enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Seller agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to Fluor Fernald. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

78 CHANGES – FIXED PRICE.

(a) Fluor Fernald may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, Fluor Fernald shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Seller must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if Fluor Fernald decides that the facts justify it, it may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Seller's proposal includes the cost of property made obsolete or excess by the change, Fluor Fernald shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Seller from proceeding with the contract as changed.

80 52.243-7 NOTIFICATION OF CHANGES.

(a) RESERVED..

(b) Notice. The primary purpose of this clause is to obtain prompt reporting of conduct of Fluor Fernald that the Seller considers to constitute a change to this contract. Except for changes identified as such in writing, the Seller shall notify Fluor Fernald in writing promptly, within 7 calendar days from the date that the Seller identifies any conduct (including actions, inactions, and written or oral communications) that the Seller regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Seller, the notice shall state -

(1) The date, nature, and circumstances of the conduct regarded as a change;

(2) The name, function, and activity of each individual involved in or knowledgeable about such conduct;

(3) The identification of any documents and the substance of any oral communication involved in such conduct;

(4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;

(5) The particular elements of contract performance for which the Seller may seek an equitable adjustment under this clause, including -

(i) What contract line items have been or may be affected by the alleged change;

(ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;

(iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;

(iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and

(6) The Seller's estimate of the time by which the Government must reasonably respond to the Seller's notice to minimize cost, delay or disruption of performance.

(c) Continued performance. Following submission of the notice required by paragraph (b) of this clause, the Seller shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Seller, unless the notice reports a direction of Fluor Fernald, in either of which events the Seller shall continue performance; provided, however, that if the Seller regards the direction or communication as a change as described in paragraph (b) of this clause, notice shall be given in the manner provided.

(d) Fluor Fernald. Fluor Fernald shall promptly, within 30 calendar days after receipt of notice, respond to the notice in writing. In responding, Fluor Fernald either -

(1) Confirm that the conduct of which the Seller gave notice constitutes a change and when necessary direct the mode of further performance;

(2) Countermand any communication regarded as a change;

(3) Deny that the conduct of which the Seller gave notice constitutes a change and when necessary direct the mode of further performance; or

(4) In the event the Seller's notice information is inadequate to make a decision under subparagraphs (d)(1), (2), or (3) of this clause, advise the Seller what additional information is required, and establish the date by which it should be furnished and the date thereafter by which Fluor Fernald will respond.

(e) Equitable adjustments.

(1) If Fluor Fernald confirms that the conduct identified effected a change as alleged by the Seller, and the conduct causes an increase or decrease in the Seller's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made -

(i) In the contract price or delivery schedule or both; and

(ii) In such other provisions of the contract as may be affected.

(2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which Fluor Fernald is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Seller in attempting to comply with the defective drawings, designs or specifications before the Seller identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by Fluor Fernald under this clause is included in the equitable adjustment, Fluor Fernald shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Seller's failure to provide notice or to continue performance as provided, respectively, in paragraphs (b) and (c) of this clause.

Note: The phrases "contract price" and "cost" wherever they appear in the clause, may be appropriately modified to apply to cost-reimbursement or incentive contracts, or to combinations thereof.

81 RESERVED

82 RESERVED

83 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS

(a) Definitions.

"Commercial item," as used in this clause, has the meaning contained in the clause at I.1, Definitions.

"Subcontract," as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Seller or subcontractor at any tier.

(b) To the maximum extent practicable, the Seller shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) Notwithstanding any other clause of this contract, the Seller is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under FAR Part 15, in a subcontract at any tier for commercial items or commercial components:

(1) 52.222-26, Equal Opportunity (E.O. 11246);

(2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));

(3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793); and

(3) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(d) Reserved.

84 GOVERNMENT PROPERTY.

In the event any Government owned property is furnished to the Seller for any purpose, such property shall be identified in the schedule to the Seller as "Government-furnished property." Unless the provisions of this contract state that the Government property is to be expended in the conduct of the work or is otherwise not to be returned to the Government, not later than final acceptance of the work, Seller agrees to return to Fluor Fernald all Government property in as good condition as when received, except for reasonable wear and tear.

85 RESERVED.

86 RESERVED.

87 RESERVED.

88 PREFERENCE FOR U.S.-FLAG AIR CARRIERS.

(a) "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government Contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) The Seller agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

(d) In the event that the Seller selects a carrier other than a U.S.-flag air carrier for international air transportation, the Seller shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): (State reasons):

[_____]
(End of statement)

(e) The Seller shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

89 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS.

(a) The Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are--

(1) Acquired for a U.S. Government agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Seller shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c) (1) The Seller shall submit one legible copy of a rated on-board ocean bill lading for each shipment to both--

(i) The Contracting Officer, and

(ii) The: Office of Cargo Preference
Maritime Administration (MAR-590)
400 Seventh Street, SW
Washington, DC 20590

Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Seller shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

(A) Sponsoring U.S. Government agency.

(B) Name of vessel.

(C) Vessel flag of registry.

(D) Date of loading.

(E) Port of loading.

(F) Port of final discharge.

(G) Description of commodity.

(H) Gross weight in pounds and cubic feet if available.

(I) Total ocean freight revenue in U.S. dollars.

(d) The Seller shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.

(e) The requirement in paragraph (a) does not apply to--

(1) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;

(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and

(3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates
Maritime Administration
400 Seventh Street, SW
Washington, DC 20590
Phone: 202-366-4610.

90(a) 52.249-2 -- Termination for Convenience of Fluor Fernald (Fixed-Price) (Sep 1996)

(a) Fluor Fernald may terminate performance of work under this contract in whole or, from time to time, in part if it determines that a termination is in its interest. Fluor Fernald shall terminate by delivering to the Seller a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by Fluor Fernald, the Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government of Fluor Fernald, as directed by Fluor Fernald, all right, title, and interest of the Seller under the subcontracts terminated, in which case Fluor Fernald shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by Fluor Fernald, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by Fluor Fernald, transfer title and deliver to Fluor Fernald or the Government --

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and

(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to Fluor Fernald.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that Fluor Fernald may direct, for the protection and preservation of the property related to this contract that is in the possession of the Seller and in which Fluor Fernald or the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by Fluor Fernald, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Seller

(i) is not required to extend credit to any purchaser and

(ii) may acquire the property under the conditions prescribed by, and at prices approved by, Fluor Fernald. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Fluor Fernald under this contract, credited to the price or cost of the work, or paid in any other manner directed by Fluor Fernald.

(c) The Seller shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by Fluor Fernald upon written request of the Seller within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Seller may submit to Fluor Fernald a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by Fluor Fernald. The Seller may request Fluor Fernald to remove those items or enter into an agreement for their storage. Within 15 days, Fluor Fernald will accept title to those items and remove them or enter into a storage agreement. Fluor Fernald may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Seller shall submit a final termination settlement proposal to Fluor Fernald in the form and with any certification prescribed by Fluor Fernald. The Seller shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by Fluor Fernald upon written request of the Seller within this 1-year period. However, if Fluor Fernald determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Seller fails to submit the proposal within the time allowed, Fluor Fernald may determine, on the basis of information available, the amount, if any, due the Seller because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Seller and Fluor Fernald may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by

(1) the amount of payments previously made and

(2) the contract price of work not terminated.

The contract shall be modified, and the Seller paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Seller and Fluor Fernald fail to agree on the whole amount to be paid because of the termination of work, Fluor Fernald shall pay the Seller the amounts determined by Fluor Fernald as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by Fluor Fernald (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of --

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by Fluor Fernald under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Seller would have sustained a loss on the entire contract had it been completed, Fluor Fernald shall allow no profit under this subdivision (g)(2)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including --

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that Fluor Fernald or the Government expressly assumed the risk of loss, Fluor Fernald shall exclude from the amounts payable to the Seller under paragraph (g) of this clause, the fair value, as determined by Fluor Fernald, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to it or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Seller shall have the rights under the Disputes clause, from any determination made by Fluor Fernald under paragraph (e), (g), or (l) of this clause, except that if the Seller failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Seller under this clause, there shall be deducted --

(1) All unliquidated advance or other payments to the Seller under the terminated portion of this contract;

(2) Any claim which Fluor Fernald or the Government has against the Seller under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Seller or sold under the provisions of this clause and not recovered by or credited to Fluor Fernald or the Government.

(l) If the termination is partial, the Seller may file a proposal with Fluor Fernald for an equitable adjustment of the price(s) of the continued portion of the contract. Fluor Fernald shall make any equitable adjustment agreed upon. Any proposal by the Seller for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by Fluor Fernald.

(m) (1) Fluor Fernald may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Seller for the terminated portion of the contract, if Fluor Fernald believes the total of these payments will not exceed the amount to which the Seller will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Seller shall repay the excess to Fluor Fernald upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C.App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Seller's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by Fluor Fernald because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Seller shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Seller's costs and expenses under this contract. The Seller shall make these records and documents available to Fluor Fernald, at the Seller's office, at all reasonable times, without any direct charge. If approved by Fluor Fernald, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

90(b) DEFAULT

(a) If the Seller refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, FLUOR FERNALD may, by written notice to the Seller, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, FLUOR FERNALD may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Seller and its sureties shall be liable for any damage to FLUOR FERNALD resulting from the Seller's refusal or failure to complete the work within the specified time, whether or not the Seller's right to proceed with the work is terminated. This liability includes any increased costs incurred by FLUOR FERNALD in completing the work.

(b) In addition to the conditions leading to default stated in (a) of this clause, FLUOR FERNALD may, by written notice to Seller, terminate the right to proceed with the work (or any separable part of the work) in the event the Seller:

(1) Fails to make timely payments to lower tier subcontractors and suppliers for material and/or labor in violation of the certification submitted under the clause entitled, Payments Under Fixed-Price Construction Contracts.

(2) Fails to provide, enforce or follow the required Environment, Safety and Health (ES&H) program as demonstrated by the following:

(A) Receipt of two or more stop work orders issued under the clause entitled, Integration of Environment, Safety, and Health into Work Planning and Execution.

(B) A willful violation of OSHA, FLUOR FERNALD ES&H, or Radiological Control requirements.

(c) The procedures in FAR Part 49, Termination of Contracts, shall apply to any subcontract termination for default.

(d) The Seller's right to proceed shall not be terminated nor the Seller charged with damages under this clause, if -

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Seller. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Seller in the performance of a contract with FLUOR FERNALD, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Seller and the subcontractors or suppliers; and

(2) The Seller, within 10 days from the beginning of any delay (unless extended by FLUOR FERNALD), notifies FLUOR FERNALD in writing of the causes of delay. FLUOR FERNALD shall ascertain the facts and the extent of delay. If, in the judgment of FLUOR FERNALD, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of FLUOR FERNALD shall be final and conclusive on the parties, in accordance with the Disputes clause of this contract.

(e) If, after termination of the Seller's right to proceed, it is determined that the Seller was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of FLUOR FERNALD.

(f) The rights and remedies of FLUOR FERNALD in this clause are in addition to any other rights and remedies provided by law or under this contract.

91 RESERVED.

92 RESERVED.

93 RESERVED.

94 REFERENCES TO FAR AND DEAR (APR 1991)

The references in this contract to FAR and DEAR sections shall apply notwithstanding any general language or limitations on applicability contained in the referenced sections

95 RESERVED.

96 COMPUTER GENERATED FORMS.

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of

the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Seller submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

97 RESERVED.

98 RESERVED.

99 PRINTING.

The Seller 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 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 Seller shall notify Fluor Fernald in writing and obtain Fluor Fernald'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 Seller will include in each of its subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

100 ORGANIZATIONAL CONFLICTS OF INTEREST.

(a) Purpose and applicability. 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. This clause applies in the event the estimated or expected payments to the Seller exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involves the performance of advisory and assistance services as that term is defined at FAR 37.201.

(b) Scope. The restrictions described herein shall apply to performance or participation by the Seller and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Seller") 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 Seller's Work Product.

(i) The Seller shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the Seller's performance of work under this contract for a period of 5 years after the completion of this contract. Furthermore, unless so directed in writing by Fluor Fernald, the Seller 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 Seller is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Seller from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the Seller prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Seller 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 Seller shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by Fluor Fernald, in which case the restriction in this subparagraph shall not apply.

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

(2) Access to and use of information.

(i) If the Seller, 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 Seller agrees that without prior written approval of Fluor Fernald 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 Seller 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 Seller 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 Seller 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 Fluor Fernald. Such disclosure may include a

description of any action which the Seller has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. Fluor Fernald may, however, terminate the contract for convenience if such termination is deemed to be in the best interest of the Government.

(2) In the event that the Seller 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 Fluor Fernald, this contract may be terminated 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 direct termination of this contract for default, disqualify the Seller 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 Fluor Fernald 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, Fluor Fernald may grant such a waiver in writing.

(f) Subcontracts.

(1) The Seller 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 FAR Part 13 and involving the performance of advisory and assistance services as that term is defined at FAR 37.201. The terms 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 Seller shall obtain from the proposed subcontractor or consultant the disclosure required by DEAR 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 Seller shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Seller. If the conflict cannot be avoided or neutralized, the Seller must obtain the approval of Fluor Fernald prior to entering into the subcontract.

101 ACQUISITION OF REAL PROPERTY.

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

(1) Purchase, on the Government's behalf or in the Seller's own name, with title eventually vesting in the Government.

(2) Lease, and the Government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.

(3) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest as a reimbursable contract cost or otherwise.

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

(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.

102 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES.

(a) The Seller 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 Seller 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.

103 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS. (APR 1984)

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by DOE and shall be preserved by the Contractor until disposal is authorized by DOE or at the option of the Contractor delivered to DOE upon completion or termination of the contract. If the Contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

104 RESERVED.

105 DISPLACED EMPLOYEE HIRING PREFERENCE.

(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, in the event the estimated or expected payments to the Seller exceed \$500,000, the Seller 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.

106 REFUND OF ROYALTIES.

(a) This clause applies in the event contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts exceed \$250 and have been reported to Fluor Fernald. The Seller warrants that all such royalty amounts have been reported to Fluor Fernald.

(b) The term "royalties" as used in this clause refers to any cost or charges in the nature of royalties, license fees, patent or use of or for the rights in patents and patent applications in connection with performing this contract or any subcontract here-under. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or the copyrighted.

(c) The Seller shall furnish to Fluor Fernald, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.

(d) The Seller will be compensated for royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the contract price and are determined by Fluor Fernald to be properly chargeable to this contract and any royalties that are included in the contract price are not, in fact, paid by the Seller or are determined by Fluor Fernald not to be properly chargeable and allocable to the contract, the contract price shall be reduced. Repayment or credit shall be made as Fluor Fernald directs. The approval by DOE of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.

(e) If, at any time within 3 years after final payment under this contract, the Seller for any reason is relieved in whole or in part from the payment of the royalties included in the contract price as adjusted pursuant to paragraph (d) of this clause, the Seller shall promptly notify Fluor Fernald of that fact and shall make reimbursement in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be including subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

107 RESERVED.

108 RESERVED.

109 RESERVED

110 NUCLEAR HAZARDS INDEMNITY AGREEMENT.

(a) Authority. This clause is incorporated into this contract in the event the contract involves the risk of public liability, as the term is defined in the Atomic Energy Act of 1954, as amended, (hereinafter call the Act) unless the contractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract. This incorporation is pursuant to the authority contained in subsection 170d. of 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 Seller 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 Seller by DOE.

(d) (1) Indemnification. To the extent that the Seller and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Seller 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 Seller 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 Seller, 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 Seller 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 Seller, on behalf of itself and other persons indemnified, agrees to waive:

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

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

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

(C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have know, 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, "off-site" 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 or Seller 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 clause 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 Seller shall give immediate written notice to DOE of any known action or claim filed or made against the Seller or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Seller shall furnish promptly to DOE, copies of all pertinent papers received by the Seller or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Seller 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 be required to indemnify hereunder; and

(2) appear through the Attorney General on behalf of the Seller 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 Seller 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 Seller to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the Seller, 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 Audit and Records - Negotiation, 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 Seller 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 Seller 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 Seller shall insert this clause in any subcontract which may involve the risk of public liability, as the term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

111 RESERVED.

112 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION.

NOTE: This is applicable if the contract involves “complex or hazardous work” (i.e. any on-site project physical work involving construction, D&D, infrastructure improvement, sample collection and analysis, excavation, transportation, or waste material packaging and placement.

(a) In performing work under this contract, the Seller 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 the work. The Seller shall ensure that management of environments, safety, health, pollution prevention and waste minimization (ES&H) functions and activities becomes an integral but visible part of the Seller’s work planning and execution process.

(b) The Seller shall comply with and assist FDF and the DOE in complying with ES&H requirements of all applicable laws and regulations, applicable directives of the DOE and follow the DFD Integrated Safety Management System (ISMS) as described in the FEMP Safety Management Description and comply with all ISMS requirements described throughout this contract. The Seller shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

(c) The seller is responsible for compliance with the applicable ES&H requirements of this contract regardless of the performer of the work.

(d) The Seller shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements. IF the Seller fails to provide resolution, or if at any time, the Seller'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, FDF may issue an order stopping work in whole or in part. Any stop work order issued under this clause is without prejudice to any other legal or contractual rights of FDF or any third party. After the issuance of such a stop work order, the Seller may not resume work until FDF in its sole discretion, issues a written order to Seller requiring the resumption of the work. The Seller shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, any such work stoppage.

113 RESERVED.

114 RESERVED.

115 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES.

(a) Program Implementation. In the event work under this contract is performed on DOE-owned or -leased facilities, the Seller 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. Fluor Fernald shall review and approve the program, and shall periodically monitor its implementation for effectiveness and compliance with 10 CFR part 707.

(b) Remedies. In addition to any other remedies available to Fluor Fernald or the Government, the Seller'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 Seller 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 Seller agrees to notify Fluor Fernald reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the Seller believes may be subject to the requirements of 10 CFR part 707.

(2) The Seller 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 Seller shall provide that each such subcontractor's program is subject to Fluor Fernald review, approval and periodic monitoring regarding implementation of the program, effectiveness and compliance with 10 CFR part 707.

(3) The Seller 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.

116 RESERVED

117 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993.

(a) In the event the total price of this contract exceeds \$500,000, 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 Seller 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.

118 LAWS, REGULATIONS, AND DOE DIRECTIVES.

(a) In performing work under this contract, the Seller 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.

(b) In performing work under this contract, the Seller shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the S/RID appended to this contract. Except as otherwise provided for in paragraph (c) of this clause, the Contracting Officer may from time to time and at any time, revise the S/RID by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising the S/RID, Fluor Fernald shall notify the Seller in writing of the Department's intent to revise the S/RID and provide the Contractor with the opportunity to assess the effect of its compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and other terms and conditions of the contract. Within 15 days after receipt of the notice, the Seller shall advise Fluor Fernald in writing of the potential impact of the Seller's compliance with the revised list. Based on the information provided by the Seller and any other information available, the Contracting Officer shall decide whether to revise the S/RID and so advise Fluor Fernald not later than 30 days prior to the effective date of the revision. The Seller and Fluor Fernald 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 the S/RID pursuant to the clause entitled, Changes, of this contract.

(c) Environmental, Safety, and Health (ES&H) requirements appropriate for work conducted under this contract have been 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 48 CFR (DEAR) 970.5204-2. The set of tailored ES&H requirements, as approved by DOE pursuant to the process, have been incorporated into the S/RID as contract requirements with full force and effect. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the Seller shall request an exemption or other appropriate regulatory relief specified in the regulation.

(d) The Seller is responsible for compliance with the requirements made applicable to this contract, regardless of the performer of the work. The Seller is responsible for flowing down the necessary provisions to subcontractors at any tier to which the Seller determines such requirements apply.

119 RESERVED.

120 52.215-12 SUBCONTRACTOR COST OR PRICING DATA.

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Seller shall require the subcontractor to submit cost or pricing data (actually or by specific identification in

writing), unless an exception under FAR 15.403-1 applies.

(b) The Seller shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Seller shall insert either;

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

(2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data – Modifications (See 3.15 hereof).

121 AUTHORIZATION AND CONSENT.

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent

(1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or

(2) used in machinery, tools, or methods whose use necessarily results from compliance by the Seller or a subcontractor with

(i) specifications or written provisions forming a part of this contract or

(ii) specific written instructions given by the Contracting Officer through Fluor Fernald directing the manner of performance.

The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent herein above granted.

(b) The Seller agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

122 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT.

(a) The Seller shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Seller has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Seller shall furnish to

the Government, when requested by the Contracting Officer, all evidence and information in possession of the Seller pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Seller has agreed to indemnify the Government.

(c) The Seller agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

123 RIGHTS IN DATA.

This clause applies in the event this is contract in which technical data or computer software is expected to be produced or is a contract for supplies that contain a requirement for production or delivery of data.

(a) Definitions.

(1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. For the purposes of this clause, the term does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(4) Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

(5) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (g)(2) of this section if included in this clause.

(6) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (g)(3) of this section if included in this clause.

(7) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include

computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

(8) Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(a) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in --

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Seller shall have the right to --

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Seller in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) of this clause.

(b) Copyright --

(1) Data first produced in the performance of this contract. Unless provided otherwise in paragraph (d) of this clause, the Seller may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Seller shall affix the applicable copyright notices of 17 U.S.C.401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Seller grants to the Government, and others acting on its behalf, a paid-up,

nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Seller grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

(2) Data not first produced in the performance of this contract. The Seller shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C.401 or 402, unless the Seller identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(c) Release, publication and use of data.

(1) The Seller shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Seller in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.

(2) The Seller agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Seller shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(3) The Seller agrees not to assert copyright in computer software first produced in the performance of this contract without prior written permission of the DOE Patent Counsel assisting the contracting activity. When such permission is granted, the Patent Counsel shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Seller, when requested, shall promptly deliver to Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

(d) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Seller, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i)The Contracting Officer shall make written inquiry to the Seller affording the Seller 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Seller fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Seller provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Contracting Officer determines that the markings are authorized, the Seller shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Seller a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Seller files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C.552) if necessary to respond to a request thereunder.

(3) This paragraph (e) does not apply if this contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.

(4) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Seller is not precluded by this paragraph (e) from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes clause of this contract, as applicable, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(e) Omitted or incorrect markings.

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Seller may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Seller --

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iii) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also

(i) permit correction at the Seller's expense of incorrect notices if the Seller identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or

(ii) correct any incorrect notices.

(f) Protection of limited rights data and restricted computer software.

(1) When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Seller desires to continue protection of such data, the Seller shall withhold such data and not furnish them to the Government under this contract. As a condition to this withholding, the Seller shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(2) -- (3) [Reserved]

(h) Subcontracting. The Seller has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Seller's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Seller shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(i) Relationship to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(j) The Seller agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Seller's facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Seller's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Seller whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

124 970.5204-96 PATENT INDEMNITY--SUBCONTRACTS. (NOV 2000)

The Seller shall indemnify and hold harmless 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) for any contract work contracted in accordance with FAR 48 CFR 52.227-3.

125 RESERVED.

126 RESERVED.

127 FAR 52.228-15 PERFORMANCE AND PAYMENT BONDS (JULY 2000)

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

"Contract price" means the award price of the contract or, for requirements contracts, the price payable for the estimated quantity; or for indefinite-delivery type contracts, the price payable for the specified minimum quantity.

(b) Amount of required bonds. Unless the resulting contract price is \$100,000 or less, the successful offeror shall furnish performance and payment bonds to FLUOR FERNALD as follows:

- (1) Performance Bonds. The penal amount of performance bonds shall be 100 percent of the original contract price.
- (2) Payment Bonds. The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.
- (3) Additional Bond protection. (i) FLUOR FERNALD may require additional performance and payment bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price.
(ii) FLUOR FERNALD may secure additional protection by directing the Seller to increase the penal amount of the existing bond or to obtain an additional bond.

(c) The Seller shall furnish all executed bonds, including any necessary reinsurance agreements, to FLUOR FERNALD within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by FLUOR FERNALD, but in any event, before starting work.

(d) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register, or may be obtained from the:

U.S. Department of Treasury
Financial Management Service
Surety Bond Branch
401 14th Street, NW, 2nd Floor, West Wing
Washington, DC 20227

128 FAR 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (JAN 1991)

(a) "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"All applicable Federal, State, and local taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax," as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Seller is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," as used in this clause, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Seller is not required to pay or bear, or for which the Seller obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

- (b) The contract price includes all applicable Federal, State, and local taxes and duties.
- (c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Seller warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.
- (d) The contract price shall be decreased by the amount of any after-relieved Federal tax.
- (e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Seller is required to pay or bear, or does not obtain a refund of, through the Seller's fault, negligence, or failure to follow instructions of FLUOR FERNALD.
- (f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.
- (g) The Seller shall promptly notify FLUOR FERNALD of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate action as FLUOR FERNALD directs.
- (h) FLUOR FERNALD shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Seller requests such evidence and a reasonable basis exists to sustain the exemption.

129 52.236-1 -- PERFORMANCE OF WORK BY THE CONTRACTOR (Apr 1984)

The Contractor shall perform on the site, and with its own organization, work equivalent to at least twenty (20%) percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

130 52.236-2 -- DIFFERING SITE CONDITIONS (Apr 1984)

- (a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of --
 - (1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or
 - (2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.
- (b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

131 52.236-3 -- SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to

- (1) conditions bearing upon transportation, disposal, handling, and storage of materials;
- (2) the availability of labor, water, electric power, and roads;
- (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- (4) the conformation and conditions of the ground; and
- (5) the character of equipment and facilities needed preliminary to and during work performance.

The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

132 52.236-4 -- PHYSICAL DATA (Apr 1984)

Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

(a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by _____ [insert a description of investigational methods used, such as surveys, auger borings, core borings, test pits, probings, test tunnels].

(b) Weather conditions _____ [insert a summary of weather records and warnings].

(c) Transportation facilities _____ [insert a summary of transportation facilities providing access from the site, including information about their availability and limitations].

(d) _____ [insert other pertinent information].

133 52.236-5 -- MATERIAL AND WORKMANSHIP (Apr 1984)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

134 52.236-6 -- SUPERINTENDENCE BY THE CONTRACTOR (Apr 1984)

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

135 52.236-7 -- PERMITS AND RESPONSIBILITIES (Nov 1991)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

136 52.236-8 -- OTHER CONTRACTS (APR 1984)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

137 52.236-9 -- PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (Apr 1984)

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities

(1) at or near the work site, and

(2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor.

The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

138 52.236-10 -- OPERATIONS AND STORAGE AREAS (Apr 1984)

(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

139 52.236-11 -- USE AND POSSESSION PRIOR TO COMPLETION (Apr 1984)

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the

Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

140 52.236-12 -- CLEANING UP (Apr 1984)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

141 52.236-13 -- ACCIDENT PREVENTION (Nov 1991)

(a) The Contractor shall provide and maintain work environments and procedures which will --

- (1) Safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;
- (2) Avoid interruptions of Government operations and delays in project completion dates; and

(3) Control costs in the performance of this contract.

(b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall --

- (1) Provide appropriate safety barricades, signs, and signal lights;
- (2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
- (3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be

entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(End of Clause)

Alternate I (Nov 1991). If the contract will involve (a) work of a long duration or hazardous nature, or (b) performance on a Government facility that on the advice of technical representatives involves hazardous materials or operations that might endanger the safety of the public and/or Government personnel or property, add the following paragraph (f) to the basic clause:

(f) Before commencing the work, the Contractor shall --

(1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and

(2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

142 52.236-14 -- AVAILABILITY AND USE OF UTILITY SERVICES (Apr 1984)

(a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

143 52.236-17 -- LAYOUT OF WORK (Apr 1984)

The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

144 52.236-21 -- SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (Feb 1997)

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give Fluor Fernald access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the

specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to Fluor Fernald, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. Fluor Fernald shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by," or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown," "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed".

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail

(1) the proposed fabrication and assembly of structural elements, and

(2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to Fluor Fernald without evidence of the Contractor's approval may be returned for resubmission. Fluor Fernald will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Fluor Fernald shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Fluor Fernald approves any such variation, Fluor Fernald shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to Fluor Fernald for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained and one set will be returned to the Contractor.

Upon completing the work under this contract, the Contractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

145 FAR 52.242-14 SUSPENSION OF WORK (APR 1984)

(a) FLUOR FERNALD may order the Seller, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that FLUOR FERNALD determines appropriate for the convenience of FLUOR FERNALD.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of FLUOR FERNALD in the administration of this contract, or (2) by FLUOR FERNALD's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Seller, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Seller shall have notified FLUOR FERNALD in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

146 FAR 52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)

(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Seller shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Seller shall maintain complete inspection records and make them available to FLUOR FERNALD. All work shall be conducted under the general direction of FLUOR FERNALD and is subject to FLUOR FERNALD or Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) FLUOR FERNALD inspections and tests are for the sole benefit of FLUOR FERNALD and do not--

(1) Relieve the Seller of responsibility for providing adequate quality control measures;

(2) Relieve the Seller of responsibility for damage to or loss of the material before acceptance;

(3) Constitute or imply acceptance; or

(4) Affect the continuing rights of FLUOR FERNALD after acceptance of the completed work under paragraph (i) of this section.

(d) The presence or absence of a FLUOR FERNALD inspector does not relieve the Seller from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without FLUOR FERNALD written authorization.

(e) The Seller shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by FLUOR FERNALD. FLUOR FERNALD may charge to the Seller any additional cost of inspection or test when work is not ready at the time specified by the Seller for inspection or test, or when prior rejection makes reinspection or retest necessary. FLUOR FERNALD shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Seller shall, without charge, replace or correct work found by FLUOR FERNALD not to conform to contract requirements, unless in the public interest FLUOR FERNALD or the Government consents to accept the work with an appropriate adjustment in contract price. The Seller shall promptly segregate and remove rejected material from the premises.

(g) If the Seller does not promptly replace or correct rejected work, FLUOR FERNALD may--
(1) By contract or otherwise, replace or correct the work and charge the cost to the Seller; or

(2) Terminate for default the Seller's right to proceed.

(h) If, before acceptance of the entire work, FLUOR FERNALD decides to examine already completed work by removing it or tearing it out, the Seller, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Seller or its subcontractors, the Seller shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, FLUOR FERNALD shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

Unless otherwise specified in the contract, FLUOR FERNALD shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work FLUOR FERNALD determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or FLUOR FERNALD's rights under any warranty or guarantee.

147 DOE NUCLEAR SAFETY REQUIREMENTS & INDEMNIFICATION FOR NUCLEAR SAFETY VIOLATIONS

- (a) The Seller shall comply with all applicable DOE Nuclear Safety Requirements as defined in 10 C.F.R. 820, *Procedural Rules for DOE Nuclear Activities*, and with provisions that implement these requirements contained elsewhere in this contract.
- (b) The Seller shall implement, document, and maintain such programs (e.g., administrative controls, procedures, and technical work documents) as necessary to ensure compliance with paragraph (a) including the maintenance of complete and accurate records. The Seller's programs and associated documents are subject to review at all times by Fluor Fernald. All information and documentation submitted by the Seller pursuant to this clause must be complete and accurate in all material respects as required by 10 C.F. R. 820.11.
- (c) The Seller shall promptly identify, document, and correct (subject to Fluor Fernald approval) noncompliances and deviations from the requirements in paragraphs (a) and (b). If additional information is needed by Fluor Fernald, the Seller shall provide such information upon request.
- (d) The Seller assumes full responsibility and shall indemnify, save harmless, and defend Fluor Fernald, its directors, officers, and employees from any liability under Section 234A (42 U.S.C. 2282a) of the Atomic Energy Act of 1954, as amended, or its implementing regulations, arising out of the activities of the Seller, its subcontractors, suppliers, agents, employees, and their officers, or directors. The Seller's obligation to indemnify and hold

- harmless shall expressly include attorneys fee's and other reasonable costs of defending any action or proceeding instituted under Section 234A or its implementing regulations.
- (e) The Seller shall include the provisions of this clause, including this paragraph (d) in all lower tier subcontracts for any activity that is subject to a DOE Nuclear Safety Requirement.