SECTION I

CONTRACT CLAUSES - GENERAL PROVISIONS

FDF General Provisions for Firm Fixed-Price Supply/Services Contracts, dated August 1994, Form GP-FFP/8/94/Rev 8, are hereby referenced and incorporated into this contract.

FERNALD ENVIRONMENTAL RESTORATION MANAGEMENT CORPORATION

GENERAL PROVISIONS

FOR

FIRM FIXED-PRICE SUPPLY/SERVICES CONTRACTS

AUGUST 1994

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

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SECTION A
SECTION A APPLIES REGARDLESS OF CONTRACT PRICE

A.1 DEFINITIONS

Whenever used in this document, the following definitions shall be applicable unless the content indicates otherwise:

(a) "DOE" shall mean the United States Department of Energy or any duly authorized representative thereof, including any successor or predecessor agency thereof, including the Contracting Officer.

(b) "Government" shall mean the United States of America.

(c) "Contracting Officer" shall mean the Government official executing the contract between FERMCO and the DOE, and includes any appointed successor or authorized representative thereof.

(d) "FERMCO" shall mean the Fernald Environmental Restoration Management Corporation. The term includes authorized representatives of FERMCO acting within the limits of their authority as delegated by FERMCO.

(e) "Seller" shall mean the person or organization entering into this contract with FERMCO.

(f) "Head of the Agency" or "Secretary" shall mean the Secretary, the Under Secretary, and Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency.

(g) "Supplies" shall mean equipment, components, parts and materials to be provided by Seller and its subcontractors pursuant to this contract.

(h) "Services" shall mean labor, direction of labor, production of technical information, consulting services or any other services furnished by Seller and its subcontractors under this contract.

(i) "Subcontractor" shall mean any subcontractor or supplier of any tier which supplies goods and/or services to Seller in connection with Seller's obligations under this contract.

(j) "Work" shall mean supplies, services, and vendor data provided by Seller and its subcontractors and all work performed with respect thereto pursuant to this contract.

(k) "Vendor Data" shall mean any and all information, data and documentation to be provided by Seller and its subcontractors under this contract.

(l) The term "Contract" also includes purchase order.

A.2 FAR 52.203-1 OFFICIALS NOT TO BENEFIT (APR 1984)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

A.3 FAR 52.203-3 GRATUITIES (APR 1984)

(a) The right of Seller to proceed may be terminated by written notice if, after notice and hearing, the head of the agency or FERMCO determines that the Seller, its agent, or another representative--

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of FERMCO; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, FERMCO is entitled--

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

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Seller in giving gratuities to the person concerned, as determined by FERMCO.

(This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

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

A.4 FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

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

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

"Bona fide employee," as used in this clause, means a person, employed by a Seller and subject to the Seller's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to

exert improper influence to solicit or obtain FERMCO contracts nor holds out as being able to obtain any FERMCO contract or contracts through improper influence.

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

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

A.5 FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO FERMCO (JUL 1985)

(a) Except as provided in (b) below, 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 FERMCO or the Government of any item or process (including computer software) made or furnished by the Seller under this contract or under any follow-on production contract.

(b) The prohibition in (a) above 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 (c), in all subcontracts under this contract.

A.6 FAR 52.203-7 ANTI-KICKBACK PROCEDURES (OCT 1988)

(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 FERMCO or any employee, any Seller or Seller employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a contract or in connection with a subcontract relating to a contract.

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

"Contract," as used in this clause, means a contract or contractual action entered into between the Seller and FERMCO for the purpose of obtaining supplies, materials, equipment, or services of any kind.

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

"Subcontract," as used in this clause, means a contract or contractual action entered into by the Seller for the purpose of providing supplies, materials, equipment, or services of any kind under this contract to FERMCO.

"Seller employee," as used in this clause, means any officer, partner, employee, or agent of the Seller.

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

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

(2) When the 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 FERMCO, DOE Inspector General, or the Department of Justice.

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

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

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

A.7 DEAR 952.208-70 PRINTING (APR 1984)

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 FERMCO in writing and obtain FERMCO's approval prior to acquiring on FERMCO's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from 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 his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

A.8 FAR 52.212-13 STOP-WORK ORDER (AUG 1989)

(a) FERMCO may, at any time, by written order to the Seller, require the Seller to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Seller, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Seller, or within any extension of that period to which the parties shall have agreed, FERMCO shall either

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of FERMCO, clauses of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Seller shall resume work. FERMCO shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if —

(1) The stop-work order results in an increase in the time required for, or in the Seller's cost properly allocable to, the performance of any part of this contract; and

(2) The Seller asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if FERMCO decides the facts justify the action, FERMCO may receive and act upon a proposal submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of FERMCO, FERMCO shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, FERMCO shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

A.9 FAR 52.222-1 NOTICE TO FERMCO OF LABOR DISPUTES (APR 1984)

(a) 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 FERMCO.

(b) The Seller agrees to insert the substance of this clause, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Seller shall immediately notify the next higher tier subcontractor or FERMCO, as the case may be, of all relevant information concerning the dispute.

A.10 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.

A.11 FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (NOV 1989)

(a) The Seller agrees to submit a Material Safety Data Sheet (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B, for all hazardous materials 5 days before delivery of the material, whether or not listed in Appendix A of the Standard. This obligation applies to all materials delivered under this contract which will involve exposure to hazardous materials or items containing these materials.

(b) "Hazardous material," as used in this clause, is as defined in Federal Standard No. 313B, in effect on the date of this contract.

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

(d) 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.

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

(1) To use, duplicate, and disclose any data furnished under 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 FERMCO and the Government for these purposes.

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

(3) That FERMCO and the Government are not precluded from using similar or identical data required from other sources.

(4) That the data shall not be duplicated, disclosed, or released outside FERMCO or the Government, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies—

"This is furnished under United States Government Prime Contract No. DE-AC05-920R21972 and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of the Seller. This legend shall be marked on any reproduction of this data."

(5) That the Seller shall not place the legend or any other restrictive legend on any data which (i) the Seller or any subcontractor previously delivered to FERMCO or the Government without limitations or (ii) should be delivered without limitations under the conditions specified in the Federal Acquisition Regulations in the clause at 52.227-14, Rights in Data.

(f) The Seller shall insert this clause, including this paragraph (f), with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designation or purchase orders) under this contract involving hazardous material.

A.12 FAR 52.224-2 PRIVACY ACT (DEVIATION) (APR 1984)

(a) 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 Seller is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the design, 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 and any employee of 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.

(d) (Deviation) The Seller shall include appropriate provisions in subcontracts to implement this requirement.

A.13 FAR 52.225-3 BUY AMERICAN ACT–SUPPLIES (JAN 1989)

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

"Components," as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

"Domestic end product," as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. On acquisitions above $25,000 in value, components of Canadian origin are treated as domestic.

"End products," as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(b) The Seller shall deliver only domestic end products, except those-

(1) For use outside the United States;

(2) That the Government or FERMCO determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the agency determines that domestic preference would be inconsistent with the public interest, or

(4) For which the agency determines the cost to be unreasonable (see section 25.105 of the Federal Acquisition Regulation).

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954, as amended, and Subpart 25.1 of the Federal Acquisition Regulation.)

A.14 FAR 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)

(a) The Seller, may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Seller shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until FERMCO authorizes such action in writing.

A.15 TIMELY PAYMENT

(a) Except to the extent expressly stated elsewhere in this contract, the contract price shall be payable thirty (30) calendar days after receipt by FERMCO of a proper invoice.

(b) The final invoice shall be submitted for payment after completion and acceptance of work by FERMCO and compliance by Seller with all terms of this contract. It shall be supported by a written acceptance of the work signed by FERMCO, and a certification and release. Unless otherwise required by applicable law, final payment shall not be made less than thirty-five (35) calendar days after completion and acceptance of all work and in any event, shall not be sooner than thirty (30) calendar days after receipt of a proper invoice and supporting documents satisfactory to FERMCO. Final payment shall not relieve Seller of any obligation under contract guarantees.

(c) Seller shall prepare all invoices in a form satisfactory to and approved by FERMCO. In the event an invoice is submitted, in accordance with contract terms, for work accomplished on a reimbursable or unit price/unit rate basis, it shall be accompanied by documentation supporting each element of measurement and/or cost. Any invoice submitted, which fails to comply with the terms of this contract, including the requirements of form and documentation, may be returned to Seller. Any costs associated with the resubmission of a proper invoice shall be to Seller's account.

(d) At FERMCO's request, Seller shall furnish evidence, satisfactory to FERMCO, that all labor and materials furnished and equipment used during the period covered by any invoice has been paid for in full and that the work is not subject to liens or claims on account thereof. FERMCO may withhold payment of invoices until Seller furnishes such evidence.

A.16 DISPUTES

(a) All disputes arising under or relating to this contract shall be resolved under this clause.

(b) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Seller seeking the payment of money exceeding $50,000 is not a claim under this clause until certified as required by subparagraph (c)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this clause. The submission may be converted to a claim under this clause, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(c) (1) A claim by the Seller shall be made in writing and submitted to FERMCO for a written decision. A claim by FERMCO against the seller shall be subject to a written decision by FERMCO.

(2) For Seller claims exceeding $50,000, the Seller shall submit with the claim a certification that--

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Seller's knowledge and belief; and

(iii) The amount requested accurately reflects the contract adjustment for which the Seller believes FERMCO is liable.

(3) (i) If the Seller is an individual, the certification shall be executed by that individual.

(ii) If the Seller is not an individual, the certification shall be executed by--

(A) A senior company official in charge at the Seller's plant or location involved; or

(B) An officer or general partner of the Seller having overall responsibility for the conduct of the Seller's affairs.

(d) For Seller claims of $50,000 or less, FERMCO must, if requested in writing by the Seller, render a decision within 60 days of the request. For Seller-certified claims over $50,000, FERMCO must, within 90 days, decide the claim or notify the Seller of the date by which the decision will be made.

(e) FERMCO's decision shall be final unless the Seller files suit within one year of such decision.

(f) At the time a claim by the Seller is submitted to FERMCO or a claim by FERMCO is presented to the Seller, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certification described in paragraph (c)(2) of this clause.

(g) The Seller shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, or action arising under or relating to the contract, and comply with any decision of FERMCO. FERMCO shall not be liable for, and Seller hereby waives, any claim or potential claim of Seller which was not reported by the Seller in accordance with the provisions of this clause.

A.17 SUBCONTRACTING

(a) Seller shall not subcontract any of the work without prior written approval of FERMCO. This provision shall not apply to purchases of standard commercial articles of raw materials on which Seller shall perform further work.

(b) Seller shall select subcontractors on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of this contract.

A.18 FAR 52.245-4 GOVERNMENT-FURNISHED PROPERTY (APR 1984)

(a) FERMCO shall deliver to the Seller, at the time and locations stated in this contract, the Government-furnished property described in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Seller, FERMCO shall equitably adjust affected provisions of this contract in accordance with the Changes Clause when:

(1) The Seller submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(b) Title to Government-furnished property shall remain in the Government. The Seller shall use the Government-furnished property only in connection with this contract. The Seller shall maintain adequate property control records in accordance with sound industrial practice and shall made such records available for Government inspection at all reasonable times, unless the clause at Federal Acquisition Regulation 52.245-1, Property Records, is in substance included in this contract.

(c) Upon delivery of Government-furnished property to the Seller, the Seller assumes the risk and responsibility for its loss or damage, except:

(1) For reasonable wear and tear;

(2) To the extent property is consumed in performing this contract; or

(3) As otherwise provided for by the provisions of this contract.

(d) Upon completing this contract, the Seller shall follow the instructions of FERMCO regarding the disposition of all Government-furnished property not consumed in performing this contract or previously delivered to the Government. The Seller shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by FERMCO. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as directed by FERMCO.

(e) If this contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

A.19 APPROVAL

The approval by FERMCO of designs, work drawings, specifications, reports, or any other data submitted by Seller hereunder shall not affect or relieve Seller from any responsibility to furnish said items in full compliance with the requirements of this contract.

A.20 DELIVERY AND PAYMENT

(a) Seller shall work such hours, including night shifts and overtime operations, as may be necessary to meet the contract delivery date(s), or any duly authorized extensions thereof, at no increase in the price of this contract.

(b) Unless otherwise provided in this contract, delivery shall not be made more than 15 days prior to the delivery dates specified herein and FERMCO may return earlier deliveries at Seller's risk and expense. Seller shall comply with the delivery schedule provided in this contract.

(c) Unless otherwise specified in this contract, a separate invoice shall be issued upon each delivery of supplies or completion of services, and shall be payable by FERMCO upon receipt and acceptance of services and receipt by FERMCO of a proper invoice therefor. Credit and discount periods shall be computed from the date such invoice is payable to the date FERMCO's check is mailed. Unless freight and other charges are itemized, the discount will be taken on the full amount of invoice. For purposes of determining payment due dates and for no other purpose, FERMCO agrees to inspect and determine the acceptability of items delivered under the terms of this contract within thirty (30) calendar days after the date of receipt or completion of work. If actual acceptance occurs later, constructive acceptance will be deemed to occur on the last day of the above stated inspection period.

(d) Payment Withheld-Vendor Data. If this contract requires the submittal of vendor data, and if such vendor data, or any part thereof, is not delivered within the time specified by this contract or is deficient upon delivery, FERMCO may, until such vendor data is delivered or deficiencies are corrected, without limiting any of its other rights or remedies, withhold payments (not to exceed 20% of the contract price) to the Seller.

(e) Notwithstanding anything herein, FERMCO shall be entitled at any and all times to set off against any amounts payable at any time by FERMCO hereunder any amount owing from Seller to FERMCO under this contract or other contracts FERMCO may have with the Seller.

A.21 WORKMANSHIP AND MATERIALS (APR 1984)

(a) Grade of workmanship and materials. Unless otherwise directed by FERMCO in writing or expressly provided for by specifications issued under this contract, and without limiting any of Seller's other responsibilities hereunder:

(1) All workmanship shall be first class; and

(2) All articles, equipment and materials incorporated in the work are to be:

(i) New and of the most suitable grade of their respective kinds for the purpose;

(ii) In accordance with any applicable drawings and specifications; and

(iii) Installed to the satisfaction and with the approval of FERMCO.

Where equipment, materials, or articles are referred to in the specifications or Statement of Work as "equal to" any particular standard,

FERMCO shall decide the question of equality.

(b) Sample and test results. If FERMCO so requires, Seller shall submit for approval samples of , or test results on, any materials proposed to be incorporated in the Work before making any commitments for the purchase of such materials. Such approval shall not relieve Seller of its obligation hereunder.

A.22 WARRANTY

(a) Seller warrants that the supplies shall be free from defects in material and workmanship, and comply with all requirements set forth in this contract, until one (1) year after first placed into service by FERMCO, or three years after acceptance, whichever first occurs. Seller shall correct any nonconformity with this warranty at its sole expense, as directed by FERMCO, by promptly: (i) repairing or replacing the nonconforming supplies specified (and correcting any plans, specifications, or drawings affected); (ii) furnishing FERMCO any materials, parts and instructions necessary to correct or have corrected the nonconformity; or (iii) paying to FERMCO a portion of the contract price as is equitable under the circumstances.

(b) Seller warrants that the services shall reflect the highest standards of professional knowledge and judgement, shall be free from defects in workmanship, and shall be in compliance with all requirements of this contract, until one (1) year from the completion of the services. Seller shall correct any nonconformity with this warranty at its sole expense, as directed by FERMCO, by promptly (i) reperforming the nonconforming services or (ii) paying to FERMCO a portion of the contract price as is equitable under the circumstances.

(c) If Seller fails to promptly perform its obligations under this clause, FERMCO may perform, or have performed, such obligations and Seller shall pay FERMCO all charges occasioned thereby.

(d) The warranty with respect to corrected supplies or services shall be subject to the same terms as the warranty provided for in paragraphs (a) and (b) above. The warranty for other than corrected or replaced supplies or services shall continue until the expiration of such period plus a period equal to the time elapsed between the discovery of the nonconformity and its correction.

(e) Unless installation is an element of the work, Seller shall not be obligated under this clause for the costs of removal or reinstallation of any supplies furnished or items serviced hereunder from the location of their installation, or for the costs of removal or reinstallation of structural parts or items not furnished by Seller hereunder. Seller shall in any event bear all packing, packaging, and shipping costs from the place of delivery, and shall bear all risk of loss or damage for the supplies or items serviced while in transit.

(f) Unless decontamination is an element of the work, in the event that Seller's costs in correcting any nonconformity under this clause are increased solely because the supplies furnished or items serviced hereunder must be decontaminated to the level specified in the definition of "radiation area" in 10 CFR 20.202, this contract price shall be equitably adjusted to reflect such additional costs after prompt written notification thereof by Seller to FERMCO.

(g) The provisions of this clause shall apply notwithstanding inspection, acceptance, or any other clause of this contract, and shall not limit any other of FERMCO's rights and remedies.

A.23 FAR 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)

(a) (1) FERMCO may, subject to paragraphs (c) and (d) below, by written notice of default to the Seller, terminate this contract in whole or in part if the Seller fails to: (i) deliver the supplies or to perform the services within the time specified in this contract or any extension; (ii) make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or (iii) perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) FERMCO's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Seller does not cure such failure within 10 days (or more if authorized in writing by FERMCO) after receipt of the notice from FERMCO specifying the failure.

(b) If FERMCO terminates this contract in whole or in part, it may acquire, under the terms and in the manner FERMCO considers appropriate, supplies or services similar to those terminated, and the Seller will be liable to FERMCO for any excess costs for those supplies or services. However, the Seller shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Seller shall not be liable for any excess costs if the failure to perform this contract arises from causes beyond the control and without the fault or negligence of the Seller. Examples of such causes include, (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Seller.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause for the default is beyond the control of both the Seller and the subcontractor, and without the fault or negligence of either, the Seller shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Seller to meet the required delivery schedule.

(e) If this contract is terminated for default, FERMCO may require the Seller to transfer title to the Government and deliver to FERMCO as directed by FERMCO, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Seller has specifically produced or acquired for the terminated portion of this contract. Upon direction of FERMCO, the Seller shall also protect and preserve property in its possession in which FERMCO or the Government has an interest.

(f) FERMCO shall pay the contract price for completed supplies delivered and accepted. The Seller and FERMCO shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. FERMCO may withhold from these amounts any sum it determines to be necessary to protect itself against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Seller was not in default, or that the default was excusable, the rights and obligation of the parties shall be the same as if the termination had been issued for the convenience of FERMCO.

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

A.24 FAR 52.249-5 TERMINATION FOR CONVENIENCE OF FERMCO (EDUCATIONAL AND OTHER NON PROFIT INSTITUTIONS) (APR 1984)

NOTE: This clause applies if the contract is for research and development work with an educational or nonprofit institution on a no-profit or no-fee basis.

(a) FERMCO may terminate performance of work under this contract in whole or, from time to time, in part if FERMCO determines that a termination is in FERMCO's interest. FERMCO 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 FERMCO, the Seller shall immediately proceed with the following obligations:

(1) Stop work as specified in the notice.

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

(3) Terminate all applicable subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.

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

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

(6) Transfer title (if not already transferred) and, as directed by FERMCO, deliver to FERMCO or the Government any information and items that, if the contract had been completed, would have been required to be furnished, including (i) materials or equipment produced, in process, or acquired for the work terminated and (ii) completed or partially completed plans, drawings, and information.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that FERMCO 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 the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by FERMCO, termination inventory other than that retained by FERMCO or the Government under subparagraph (6) above; 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, FERMCO or the Government. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by FERMCO under this contract, credited to the price or cost of the work, or paid in any other manner directed by FERMCO or the Government.

(c) After termination, Seller shall submit a final termination settlement proposal to FERMCO in the form and with the certification prescribed by FERMCO. The Seller shall submit the proposal promptly but no later than twelve months from the effective date of termination unless extended in writing by FERMCO upon written request of the Seller within this twelve-month period. If the Seller fails to submit the termination settlement proposal within the time allowed, FERMCO 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.

(d) Subject to paragraph (c) above, the Seller and FERMCO may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Seller and any reasonable loss on outstanding commitments for personal services that the Seller is unable to cancel; provided, that the Seller exercised reasonable diligence in diverting such commitments to other operations. The contract shall be amended and the Seller paid the agreed amount.

(e) The cost principles and procedures in Subpart 31.3 of the Federal Acquisition Regulation (FAR), in effect on the date of the contract, shall govern all costs claimed, agreed to, or determined under this clause; however, if the Seller is not an educational institution, and is a nonprofit organization under Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Nonprofit Organizations," July 8, 1980, those cost principles shall apply; provided, that if the Seller is a nonprofit institution listed in Attachment C of OMB Circular A-122, the cost principles at FAR 31.2 for commercial organizations shall apply to such Seller.

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

A.25 FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (JUN 1988)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, FERMCO will make their full text available.

A.26 DOE PR 9-9.102-2 AUTHORIZATION AND CONSENT (JUN 1979)

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including all lower-tier subcontracts).

A.27 FAR 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)

Except for data contained on pages _____, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights in and to the technical data contained in the proposal dated _____, upon which this contract is based.

A.28 LOCAL 999.H08 CONFIDENTIALITY OF INFORMATION (APR 1984)

(a) To the extent that the work under this contract requires that the Seller be given access to confidential or proprietary business, technical, or financial information belonging to the Government, FERMCO or other companies, the Seller shall after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by FERMCO in writing. The foregoing obligations, however, shall not apply to:

(1) Information which, at the time of receipt by the Seller, is in public domain;

(2) Information which is published after receipt thereof by the Seller or otherwise becomes part of the public domain through no fault of the Seller;

(3) Information which the Seller can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government, FERMCO or other companies;

(4) Information which the Seller can demonstrate was received by it from a third party who did not require the Seller to hold it in confidence.

(b) The Seller shall obtain the written agreement, in a form satisfactory to FERMCO, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Seller's organization directly concerned with the performance of the contract.

(c) The Seller agrees, if requested by FERMCO, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Seller under this contract, and to supply a copy of such agreement to FERMCO. From time to time upon request of FERMCO, the Seller shall supply FERMCO with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Seller received such information.

(d) The Seller agrees that upon request by FERMCO it will execute a FERMCO-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by FERMCO, such an Agreement shall also be signed by Seller personnel.

(e) This clause shall flow down to all subcontracts.

A.29 QUALITY ASSURANCE PROGRAM (MAY 1993)

Seller and Subcontractors at any tier shall comply with FERMCO's Quality Assurance Program.

A.30 OWNERSHIP AND DISPOSITION OF RECORDS (APR 1991)

(a) Contract Records. All data or information furnished to the Seller and generated under this contract paid for by FERMCO shall be the property of FERMCO or the Government as appropriate, and shall be delivered to FERMCO or otherwise disposed by the Seller either as FERMCO may from time-to-time direct during the progress of the work, or in any event as FERMCO shall direct upon completion or termination of this contract and final audit of all accounts hereunder. FERMCO or the Government shall have the right to use all or any part of said data or information which is the property of FERMCO or the Government as appropriate, for any legal purpose.

(b) Disposition of Contract Records. Upon expiration, completion, or termination of this contract, the Seller shall have the right to retain a copy of all applicable Seller generated records or the parties may agree on an alternative method to assure continued access by the Seller to such records.

(c) Prohibition Against Dissemination of Certain Unclassified Information or Technical Data. Notwithstanding any other authority or provision in this contract regarding protection or withholding of information, the Seller shall comply with Section 148 of the Atomic Energy Act of 1954, 42 USC 2167 "Prohibition Against Dissemination of Certain Unclassified Information" in accordance with such regulations or orders as the Secretary of Energy has prescribed or may prescribe. No technical data (as defined in DEAR 952.224-78 Rights in Technical Data--Facility) or information made available to the Seller by FERMCO or the Department of Energy or technical data or information first produced in the performance of this contract or any subcontract, but thereunder, shall be disseminated, unless FERMCO certifies in writing that the technical data may be disseminated.

(d) The Seller shall include appropriate provisions in subcontracts to implement this requirement.

A.31 PATENT AND DATA FUNCTIONS (MAY 1991)

(a) All subcontracts including consultant subcontracts which call for technology development activities or remediation shall be subject to prior FERMCO approval.

(b) Both Seller and subcontractor(s) shall be responsible for recording or having recorded all technology development activities and environmental remediation activities performed under this contract or its subcontracts involving technology development activities or environmental remediation activities for use in meeting technical reporting requirements as may be required by FERMCO.

(c) The Seller for itself and its subcontractors shall be responsible to ensure that all requirements of the Intellectual Property clauses reflected herein and DOE PR 9-9.102-2, DOE PR 9-9.104, DOE PR 9-9.110(c) and FAR 52.227-23 clauses include the responsibility for obtaining all rights in patented and unpatented technology including copyrights to effect environmental remediation, decontamination or decommissioning activities as may be required by FERMCO for use at the Fernald Environmental Management Project site or by the contracting officer at other sites owned or controlled by the Government.

(d) The representation and certification required in FAR 52.227-15 shall be provided by the Seller from each subcontractor on the anniversary of each subcontract in addition to the representation and certification provided prior to execution of such subcontracts.

(e) All of the Intellectual Property clauses herein and DOE PR 9-9.102.2, DOE PR 9-9.104, DOE PR 9-9.110(c) and FAR 52.227-23 clauses flow down to all subcontracts, unless otherwise approved by FERMCO.

A.32 INDEMNITY

(a) Seller agrees to defend, indemnify and hold harmless Fluor Daniel, FERMCO and the Government, their parent, affiliated and subsidiary companies, including the employees, agents, representatives, officers and

directors of each of them, from and against:

(1) Any claim, demand, cause of action, liability, loss or expense arising from Seller's actual or asserted failure to comply with any of the provisions of this contract;

(2) Any claim, demand, cause of action, liability, loss or expense arising from Seller's actual or asserted failure to comply with any law, ordinance, regulation, rule or order of any governmental or quasigovernmental body (including, but not limited to, the actual or asserted failure to pay taxes) including such failures by Seller, its subcontractors or suppliers; and

(3) Any claim, demand, cause of action, liability, loss or expense relating to actual or alleged contamination, pollution, or public or private nuisance, arising directly or indirectly out of the goods or services provided under this contract, including the acts or omissions of Seller, its subcontractors or suppliers.

(b) (1) If this contract is one for the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance, or appliance, including moving, demolition and excavating connected therewith, then:

(i) Seller agrees to indemnify and hold harmless Fluor Daniel, FERMCO and the Government, their parent, affiliated and subsidiary companies, including the employees, agents, representatives, officers and directors of each of them, from and against any claim, demand, cause of action, liability, loss or expense arising from personal injury (including death) or property damage, to the extent that such personal injury or property damage is caused by the negligence of Seller, its subcontractors or suppliers; and

(ii) Seller agrees to provide for the complete and unconditional defense of Fluor Daniel, FERMCO and the Government, and any other parties indemnified under section (b)(1)(i), above, at Seller's expense, regardless of the proportionate fault of the party to be indemnified, except where such personal injury or property damage was caused without any fault or negligence on the part of Seller, its subcontractors or suppliers.

(2) For contracts not included in section (b)(1), above, Seller agrees to defend, indemnify and hold harmless Fluor Daniel, FERMCO and the Government, their parent, affiliated and subsidiary companies, including the employees, agents, representatives, officers and directors of each of them, from and against all claims, demands, causes of action, liability, loss or expense arising from personal injury (including death) or property damage arising directly or indirectly out of the goods or services provided under this contract. The defense and indemnity obligations of Seller under this section (b)(2) extend to personal injury or property damage caused by Seller's subcontractors or suppliers, and include claims, demands, causes of action, liability, loss or expense arising under non-delegable duties of Fluor Daniel, FERMCO or the Government or arising from Seller's use of equipment, tools or facilities of Fluor Daniel, FERMCO, or the Government. The defense and indemnity obligations of Seller under this clause (b)(2) apply in full regardless of any concurrent negligence or fault, whether active or passive, of any party to be indemnified, unless such personal injury or property damage arises solely from the negligence, fault or willful misconduct of the party to be indemnified.

(c) Seller agrees that its indemnity obligations include the duty to reimburse attorneys' fees and expenses incurred by Fluor Daniel, FERMCO or the Government for legal action to enforce Seller's indemnity obligations under this clause.

A.33 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.

A.34 DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST-SPECIAL CLAUSE (NOV 1987)

NOTE: Need to see DEAR 909.570

(a) Purpose. The primary purpose of this clause is to aid in ensuring that the Seller (1) is not biased because of its past, present, or currently planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the 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 Seller, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity.

(1) Technical consulting and management support services.

(i) The Seller shall be ineligible to participate in any capacity in FERMCO/Government contracts, subcontracts, or proposals therefor (solicited or unsolicited) which stem directly from the Seller's performance of work under this contract. Furthermore, unless so directed in writing by FERMCO, the Seller shall not perform any technical consulting or management support 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 technical consulting and management support services.

(ii) If the Seller under this contract prepares a complete or essentially complete statement of work or specifications to be used in competitive procurements, 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 FERMCO, 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 commercial items to FERMCO.

(2) Access to and use of information.

(i) If the Seller, in the performance of this contract, obtains access to information, such as FERMCO or DOE plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93-579), or data which has not been released or otherwise made available to the public, the Seller agrees that without prior written approval of FERMCO 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 FERMCO 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 FERMCO 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 FERMCO.

(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 (Pub. L. 93-579), 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 shall have, subject to patent, data, and security clauses of this contract, the right to use technical data it first produces under this contract for its private purpose consistent with the Rights in Data provisions of this contract.

(c) Disclosure after award. (1) The Seller agrees that if after award it discovers an organizational conflict of interest with respect to this contract, an immediate and full disclosure shall be made in writing to FERMCO which shall include a description of the action which the Seller has taken or proposes to take to avoid or mitigate such conflicts. FERMCO may, however, terminate the contract for convenience if it deems such termination to be in the best interests of FERMCO.

(2) In the event that the Seller was aware of an organizational conflict of interest prior to the award of this contract and did not disclose the conflict to FERMCO, FERMCO may terminate the contract for default.

(d) Subcontracts. (1) The Seller shall include this clause, including this paragraph, in subcontracts of any tier which involve performance or work of the type specified in (b)(1) above or access to information of the type covered in (b)(2) above. The terms "contract", "Seller" and "FERMCO" shall be appropriately modified to preserve FERMCO's rights.

(2) If a subcontract is to be issued for evaluation services or activities, technical consulting or management support services work as defined at DEAR 909.570(c) and (d), the Seller shall obtain for FERMCO a disclosure statement or representation, in accordance with DOE regulations in effect at the time, from each intended subcontractor or consultant. The Seller shall not enter into any subcontract nor engage any consultant unless FERMCO shall have first notified the Seller that there is little or no likelihood that an organizational conflict of interest exists or that despite the existence of a conflict of interest the award is in the best interest of FERMCO and the Government.

(e) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, FERMCO may terminate the contract for default, disqualify the Seller for subsequent related contractual efforts and pursue such other remedies as may be permitted by law or this contract.

(f) Waiver. Requests for waiver under this clause shall be directed in writing to FERMCO 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 FERMCO and the Government, FERMCO shall grant such a waiver in writing.

(g) Modifications. Prior to a contract modification when the statement of work is modified to add new work, the period of performance is significantly increased, or the parties to the contract are changed, FERMCO will request and the Seller is required to submit either an organizational conflict of interest disclosure or representation (see DEAR 909.5) or an update of the previously submitted disclosure or representation.

A.35 ORGANIZATIONAL CONFLICTS OF INTEREST - SELLER AND SUBCONTRACTORS (APR 1991)

The Seller will not be permitted to subcontract any portion of the work to its subsidiaries, affiliates or otherwise related companies through common ownership or control, without FERMCO's approval.

The Seller and its subcontractors will not be permitted to perform more than one of the following categories: remedial investigation/feasibility studies; remedial design; or remedial action work. The Seller shall include appropriate flow-down provisions in its subcontracts to implement this clause.

The Seller and its subcontractors shall exert best efforts to acquire for FERMCO on the best terms available but shall be free (but shall not be obligated) to furnish items of such materials, supplies, equipment, and facilities of its own manufacture (or of the manufacture of its subsidiary corporations), provided it obtains FERMCO's concurrence in advance.

A.36 ORGANIZATIONAL CONFLICTS OF INTEREST - LABORATORY UTILIZATION PLAN (JUN 1992)

(a) The purpose of this clause is to ensure that the Seller (1) is not biased because of its past, present, or currently planned interests (financial, contractual, organizational, or otherwise) which relate to the provision of analytical services by laboratories to support the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) This clause supplements the organizational conflicts of interest restrictions contained in the clauses entitled "Organizational Conflicts Of Interest - Special Clause" and "Organizational Conflicts Of Interest - Seller And Subcontractors" and does not supersede any restrictions or requirements contained in those clauses.

(c) Plan for Laboratory Analytical Support Services.

(i) Upon assuming responsibility under the contract and prior to using the analytical services of any laboratories owned by or affiliated with the Seller, the Seller shall submit a Laboratory Utilization Plan to FERMCO that projects the use of analytical services by all laboratories for the work under this contract, including any Seller-affiliated laboratories. This plan shall be updated annually.

(ii) The Laboratory Utilization Plan shall describe type and amount of analytical services required to support the work each year and include projections for the use of any Seller-affiliated laboratories, including the type of analytical services, the costs of those services, and the availability of (or capacity) of qualified laboratories providing similar services that are not affiliated with the Seller.

(iv) The Seller must obtain approval from FERMCO under the clause entitled "Organizational Conflict of Interest - Special Clause" and "Organizational Conflict of Interest - Seller and Subcontractors" before using Seller-affiliated laboratories for analytical services to support work under the contract.

A.37 ENVIRONMENT, SAFETY AND HEALTH (FERMCO/GOVERNMENT-OWNED OR LEASED) (NOV 1991)

(a) The Seller shall ensure that performance of the work under this contract is conducted: (1) in a manner that is protective of the environment, safety and health (ES&H) of DOE and FERMCO employees and the public, and (2) in compliance with all applicable environmental, safety and health requirements (including applicable permitting and reporting requirements) including federal, state, and local laws and regulations, DOE and FERMCO requirements including without limitation, the applicable ES&H plan. If the Seller fails to comply with said regulations or requirements, FERMCO may, without prejudice to any other legal or contractual rights of FERMCO, issue an order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of FERMCO. The Seller shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppage, except as may be provided elsewhere. FERMCO shall notify the Seller, in writing, of any noncompliance (found by FERMCO or designated representatives) with the provisions of the clause and the corrective action to be taken. After receipt of such notice, the Seller shall immediately take corrective action and notify FERMCO in writing of the corrective action plan and time frames for completion.

(b) The Seller shall submit, if required by FERMCO, within 30 days after the date of award of this contract, an environmental, safety and health program management and implementation plan for review and approval. The plan shall describe the management systems to be employed to ensure that environmental, safety and health requirements are appropriately considered in all phases of contract activities. The plan shall also include provisions for an internal environmental, safety and health performance evaluation and corrective action system to provide management with a continuing assessment of the adequacy and implementation of the environmental, safety and health programs and assurance that deficiencies are corrected. The results of such evaluations shall be made available to FERMCO.

(c) The Seller shall include in all of its subcontracts, involving performance of work at the site, the provisions requiring subcontractors to comply with FERMCO'S environmental, safety and health requirements and all other requirements of this clause. However, such provisions in the subcontracts shall not relieve the Seller of its obligations to assure compliance with the provisions of this clause for all aspects of the work.

(d) The Seller, if required by FERMCO, shall submit for approval to FERMCO, its policies, procedures and provisions for including appropriate environment, safety and health requirements, including reporting requirements, in subcontracts, with respect to work to be performed at a FERMCO or DOE -owned or -leased facility. These ES&H requirements shall be in accordance with applicable DOE/FERMCO regulations, directives, and other FERMCO or DOE requirements. The subcontract provisions shall provide that no claim shall be made for adjustment in the subcontract amount or the performance schedule, or for damages, by reason of a stop work order issued for failure to comply with ES&H regulations or requirements of FERMCO or the DOE.

A.38 ENVIRONMENTAL PROTECTION (NOV 1991)

In addition to complying with the requirements set forth in the "Environment, Safety and Health" and "Clean Air and Water" clauses, in the performance of this contract the Seller and its subcontractors at any tier-

(a) Shall comply, as applicable, with the following:

(1) The Atomic Energy Act of 1954, as amended (42 U.S.C. 2011, et seq.);

(2) The Department of Energy Organization Act (42 U.S.C. 7101, et seq.);

(3) The Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901, et seq.);

(4) The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601, et seq.);

(5) The Safe Drinking Water Act, as amended (42 U.S.C. 300, et seq.);

(6) The Toxic Substances Control Act, as amended (15 U.S.C. 2601, et seq.);

(7) The Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136, et seq.);

(8) The Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401, et seq.);

(9) The Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451, et seq.);

(10) The Coastal Barrier Resource Act of 1982 (16 U.S.C. 3501, et seq.);

(11) The Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101, et seq.);

(12) The Low-Level Radioactive Waste Policy Act, as amended (42 U.S.C. 2021, et seq.);

(13) The Uranium Mill Tailings Radiation Control Act of 1979, as amended (42 U.S.C. 7901, et seq.);

(14) Title 40 of the Code of Federal Regulations, part 61, subpart H (National Emission Standard for Radionuclide Emissions from Department of Energy Facilities) chapter I, subchapter F (Radiation Protection Programs), and parts 247 through 253 (Solid Wastes, Guidelines for procurement of certain products that contain recycled/recovered materials);

(15) Code of Federal Regulations, title 10 (Energy), parts involving environmental protection and related requirements for Sellers/subcontractors;

(16) DOE directives (i.e., Orders and Notices) numbered in the series between 5000.2 and 5000.4 (Unusual Occurrence Reporting), in the series between 5400 and 5500 (Environmental Quality and Impact), and between 5820.1 and 5820.3 (Radioactive Waste Management), and involving requirements for Sellers/subcontractors; and

(17) Other, Federal and non-Federal, environmental protection laws, codes, ordinances, regulations, and requirements in directives, as identified in writing by FERMCO. Failure to list a law above, or to identify a requirements having the force and effect of law, shall not be construed as waiving a requirement for the Seller or subcontractor to comply with such law or requirement.

(b) shall assist FERMCO and the Department of Energy (DOE) in complying, as applicable, with the following:

(1) The National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, et seq.);

(2) The Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.);

(3) The Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661, et seq.);

(4) The Noise Control Act of 1972, as amended (42 U.S.C. 4901, et seq.);

(5) The National Historic Preservation Act of 1968, as amended (16 U.S.C. 470, et seq.);

(6) The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1273, et seq.);

(7) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201, et seq.);

(8) Executive Order 11988, of May 24, 1977, Protection of Wetlands;

(9) Executive Order 11990, of May 24, 1977, Protection of Wetlands;

(10) Executive Order 12088 of October 13, 1978, Federal Compliance with Pollution Control Standards;

(11) Executive Order 12580 of January 23, 1987, Superfund Implementation;

(12) Office of Management and Budget (OMB) Circular No. A-106 of December 31, 1974, Reporting Requirements in Connection with the Prevention, Control, and Abatement of Environmental Pollution of Existing Federal Facilities; and

(13) Other, Federal and non-Federal, environmental protection laws, codes, ordinances, regulations, and directives, as identified in writing by FERMCO.

(c) shall with regard to the environmental protection laws, codes, ordinances, regulations and directives described in the clauses entitled, "Environment, Safety and Health" and "Clean Air and Water," or included in or covered by paragraphs (a) and (b) of this section:

(1) Research these laws, codes, ordinances, regulations and directives on an ongoing basis and, for changes therein, adjust contract performance, as necessary, to assure continuing compliance;

(2) Identify, and inform FERMCO in writing, of any inconsistencies among these laws, codes, ordinances, regulations, and directives which would affect or preclude the Seller's/subcontractor's ability to perform; and

(3) Include consideration of these laws, codes, ordinances, regulations, and directives in all planning activities performed under this contract; and

(d) Shall set forth appropriate environmental protection requirements in subcontracts with respect to work to be performed at FERMCO or DOE -owned or -leased facility.

A.39 PERMITS AND LICENSES (MAY 1993)

(a) Except as notified in writing by FERMCO, the Seller shall obtain, without additional expense to FERMCO, any necessary permits and licenses required by laws, codes, ordinances, and regulations of the United States, a state or territory, and a municipality or other political subdivision, and which are applicable to the performance of work under this contract. This includes, but is not necessarily limited to, identifying if such permits and licenses are required, compiling the information and data required for applications to obtain permits and licenses, filing any application required to obtain permits and licenses, and providing any additional information or data required.

(b) When notified by FERMCO that FERMCO or the DOE will obtain certain permits or licenses, the Seller shall provide all reasonable assistance requested, including providing information or data, that is required for obtaining such permits or licenses.

(c) The Seller shall comply with all laws, codes, ordinances, and regulations of the United States, a state or territory, and a municipality or other political subdivision, and that are applicable to the performance of work under this contract.

(d) Seller shall not, under any circumstances apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health, or air, water or noise pollution laws or regulations relating to this contract or to the performance thereof, without FERMCO's prior written approval.

A.40 DEAR 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (DEVIATION) (APR 1984)

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by FERMCO and the Government and shall be preserved by the Seller until disposal is authorized by FERMCO or at the option of the Seller delivered to FERMCO upon completion or termination of the contract. The Seller shall include appropriate provisions in subcontracts to implement this requirement.

A.41 DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JAN 1992)

(a) Authority. This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)

(b) Definitions. The definitions set out in the Act shall apply to this clause.

(c) Financial protection. Except as hereafter permitted or required in writing by FERMCO, the Seller will not be required to provide or maintain, and will not provide or maintain at FERMCO expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. FERMCO may, however, at any time require in writing that the Seller provide and maintain financial protection of such a type and in such amount as FERMCO shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to

the Seller by FERMCO.

(d) (1) Indemnification. To the extent that Seller and other persons indemnified are not compensated by any financial protection permitted or required by FERMCO, FERMCO will indemnify the Seller to the extent that FERMCO is indemnified by the Government, 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 FERMCO, not to exceed the amount set forth in section 170e.(1)(B) of the Act in 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 the 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 known of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue of 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 FERMCO/DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.

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

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

(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(v) Shall not apply to injury, to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

(vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and

(viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) Notification and Litigation of claims. The Seller shall give immediate written notice to FERMCO 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 FERMCO, the

Seller shall furnish promptly to FERMCO copies of all pertinent papers received by the Seller or filed with respect to such actions or claims. FERMCO 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 FERMCO for the payment of any claim that FERMCO may 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 FERMCO 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 FERMCO, the Seller or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) Continuity of FERMCO obligations. The obligations of FERMCO 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 "Disputes," provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, Officials Not to Benefit, and Examination of Records by the Comptroller General, 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 who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable FERMCO and DOE nuclear-safety related rules, regulations, or orders.

(j) Criminal penalties. Any individual director, officer, or employee of the Seller or of its subcontractors 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 FERMCO and 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 that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

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

A.42 CHANGES – FIXED-PRICE (JUN 1994)

FERMCO may at any time, exclusively by a written order, and without notice to sureties, make changes within the general scope of this contract that affect the

(i) drawing, specifications, or description of services;
(ii) method of shipment or packing;
(iii) place of inspection, delivery or acceptance;
(iv) delivery schedules,
(v) time of performance (i.e., hours of days, days of week etc), or
(vi) place of performance of services.

If any such changes cause an increase or decrease in the cost of, or the time required for performance of this contract, FERMCO shall make an equitable adjustment in the contract price, cost, fee, or delivery schedule. Any request by Seller for adjustment under this clause must be asserted in writing within fifteen (15) days after Seller's receipt of the change; provided, however, that FERMCO may at its sole discretion, extend that time prior to final payment under this contract. If the Seller's proposal incudes the cost of property made obsolete or excess by the changes, FERMCO shall have the right to prescribe the manner of the disposition of the property. Seller shall diligently perform this contract as changed pending agreement on an equitable adjustment.

A.43 DEAR 970.5204-12 SELLER'S ORGANIZATION (DEVIATION) (APR 1984)

(a) Organization chart. As promptly as possible after the execution of this contract, the Seller shall furnish to FERMCO, if required by FERMCO, a chart showing the names, duties, and organization of key personnel to be employed in connection with the work, and shall furnish from time to time supplementary information reflecting changes therein.

(b) Supervisory representative of Seller. Unless otherwise directed by FERMCO, a competent full-time resident supervisory representative of the Seller satisfactory to FERMCO shall be in charge of the work at the site at all times. This also applies to off-site work.

(c) The Seller shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. The Seller shall establish such standards and procedures as are necessary to implement effectively the provisions set forth in DEAR 970.2272, and such standards and procedures shall be subject to the approval of FERMCO. If the Seller fails to remove any employee from the contract work whom FERMCO deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by FERMCO to be contrary to the public interest, FERMCO reserves the right to require the Seller to remove the employee at no cost to FERMCO.

A.44 REQUIRED INSURANCE (MAY 1994)

(a) It is understood that as a part of its normal course of business, the Seller maintains the following kinds of insurance. The Seller shall not cancel or incorporate further restrictive language in any policy required by this clause without first providing thirty (30) days prior written notice to FERMCO. The Seller shall, prior to commencement of any work at Fernald Environmental Management Project (FEMP) under this contract, submit its Certificate of Insurance to FERMCO, showing coverage for the following types and amounts.

(1) Commercial General Liability. Bodily injury liability insurance coverage written on the comprehensive form of policy of at least $500,000 per occurrence. The policy shall be endorsed to name Fluor Daniel, FERMCO and the Government as additional insureds.

(2) Automobile Liability. Comprehensive coverage shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the work under the contract. Coverage is required for automobiles of at least $200,000 per person and $500,000 per occurrence for bodily injury and $200,000 per occurrence for property damage. The policy shall be endorsed to name Fluor Daniel, FERMCO, and the Government as additional insureds.

(b) Seller agrees to comply (and require its Subcontractors to comply) with all applicable laws, rules, and regulations with respect to Workers/Workmen's Compensation or occupational disease, or withholding and payment of Social Security and Federal Income Taxes. The Seller further agrees to indemnify Fluor Daniel, FERMCO and the Government against, and to save and hold harmless Fluor Daniel, FERMCO and the Government from any and all liability and expense with respect to claims against Fluor Daniel, FERMCO or the Government which may result from the failure or alleged failure of Seller or of any of its subcontractors to comply therewith.

(c) Seller hereby waives subrogation against and releases Fluor Daniel, FERMCO, the Government, and their directors, officers, employees and representatives from all liability covered by Seller's insurance for losses or claims arising out of Seller's performance of this contract.

A.45 ASSIGNMENT (SEPT 1993)

(a) Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the Seller except as expressly authorized in writing by FERMCO.

(b) FERMCO may assign this contract, in whole or in part to DOE or to such party as DOE may designate to perform FERMCO's obligations hereunder. Upon receipt by Seller of written notice that the DOE or a party so designated by the DOE or FERMCO has accepted an assignment of this contract, FERMCO shall be relieved of all responsibility hereunder and Seller shall thereafter look solely to such assignee for performance of FERMCO's obligations.

A.46 FAR 52.249-2 TERMINATION FOR CONVENIENCE OF FERMCO

(a) FERMCO may terminate performance of work under this contract in whole or, from time to time, in part if FERMCO determines that a termination is in FERMCO's interest. FERMCO 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 FERMCO, 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, as directed by FERMCO, all right, title, and interest of the Seller under the subcontracts terminated, in which case FERMCO 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 FERMCO, 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 FERMCO, transfer title to the Government and deliver to FERMCO (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 FERMCO.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that FERMCO 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 the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by FERMCO, any property of the types referred to in subparagraph (6) above; 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, FERMCO. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by FERMCO under this contract, credited to the price or cost of the work, or paid in any other manner directed by FERMCO.

(c) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Seller may submit to FERMCO a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by FERMCO. The Seller may request FERMCO to remove those items or enter into an agreement for their storage. Within 15 days, FERMCO will accept title for and on behalf of the Government to those items and remove them or enter into a storage agreement. FERMCO 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.

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

(e) Subject to paragraph (d) above, the Seller and FERMCO may agree upon the whole or any part of the amount 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 (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, 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 amended, and the Seller paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

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

(1) The contract price for completed supplies or services accepted by FERMCO (or sold or acquired under subparagraph (b)(9) above) 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 (f)(1) above;

(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 (i) above;

and (iii) A sum, as profit on subdivision (i) above, determined by FERMCO 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, FERMCO shall allow no profit under this subdivision (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.

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

(h) 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.

(i) If FERMCO has made a determination of the amount due under paragraph (d),(f), or (k), FERMCO shall pay the Seller the amount determined by FERMCO

(j) In arriving at the amount due FERMCO 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 FERMCO 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 FERMCO.

(k) If the termination is partial, the Seller may file a proposal with FERMCO for an equitable adjustment of the price(s) of the continued portion of the contract. FERMCO 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 FERMCO.

(l) (1) FERMCO 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 FERMCO 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 FERMCO 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 FERMCO because of the circumstances.

(m) 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 FERMCO, or the Government at the Seller's office, at all reasonable times, without any direct charge. If approved by FERMCO, photographs, micropnotographs, or other authentic reproductions may be maintained instead of original records and documents.

A.47 DOE PR 9-9.103-3 INTELLECTUAL PROPERTY INDEMNITY (JUN 1979)

(a) The Seller shall indemnify Fluor Daniel, FERMCO, the Government and their directors, officers, agents, and employees against liability, including costs, for infringement of U.S. Letters Patent (except U.S. Letters Patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) resulting from the Seller's:

(1) furnishing or supplying standard parts or components which have been sold or offered for sale to public on the commercial open market; or

(2) utilizing its normal practices or methods which normally are or have been used in providing goods and services in the commercial open market, in the performance of the contract; or

(3) utilizing any parts, components, practices, or methods to the extent to which the Seller has secured indemnification from liability. The foregoing indemnity shall not apply unless the Seller shall have been informed as soon as practicable by FERMCO or the Government of the

suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to claimed infringement which is settled without the consent of the Seller, unless required by final decree of a court of competent jurisdiction or to an infringement resulting from addition to or change in such supplies or components furnished or construction work performed for which addition or change was made subsequent to delivery or performance by the Seller.

(b) The Seller shall indemnify and save and hold harmless Fluor Daniel, FERMCO, the Government and their directors, officers, agents, and employees acting within the scope of their official duties against any liability including costs and expenses for violation by the Seller of proprietary rights or copyrights arising out of delivery or use of any data furnished or utilized by the Seller in the course of or under this contract.

A.48 DOE PR 9-9.106 CLASSIFIED INVENTIONS (JUN 1979)

(a) The Seller shall not file or cause to be filed on any invention or discovery conceived or first actually reduced to practice in the course of or under this contract, in any country other than the United States, an application or registration for a patent without first obtaining written approval of FERMCO.

(b) When filing a patent application in the United States on any invention or discovery conceived or first actually reduced to practice in the course of or under this contract, the subject matter of which is classified for reasons of security, the Seller shall observe all applicable security regulations covering the transmission of classified subject matter. When transmitting the patent application to the United States Patent and Trademark Office, the Seller shall by separate letter identify by agency and number, the contract or contracts which require security classification markings to be placed on the application.

(c) The substance of this clause shall be included in subcontracts which cover or are likely to cover classified subject matter.

A.49 DEAR 952.227-75 RIGHTS IN TECHNICAL DATA-LONG FORM (ALTERNATES I AND II) (DEVIATION) (APR 1984)

(a) Definitions.

(1) "Technical data" means recorded information regardless of form or characteristics, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or demonstration, or engineering work, or be usable or used to define a design or process, or to procure, produce, support, maintain, or operate material. This data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used herein do not include financial reports, cost analyses, and other information incidental to contract administration.

(2) "Proprietary data" means technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

(i) Are not generally known or available from other sources without obligation concerning their confidentiality;

(ii) Have not been made available by the owner to others without obligation concerning its confidentiality; and

(iii) Are not already available to the Government without obligation concerning the confidentiality.

(3) "Contract data" means technical data first produced in the performance of the contract in technical data which are specified to be delivered under the contract; technical data that may be called for under the Additional Technical Data Requirements clause of the contract, if any, or technical data actually delivered in connection with the contract.

(4) "Unlimited rights" means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) Allocation of rights.

(1) The Government shall have:

(i) Unlimited rights in contract data except as otherwise provided below with respect to proprietary data;

(ii) The right to remove, cancel, correct or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder, if in response to a written inquiry by DOE concerning the propriety of the markings, the Seller fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case, FERMCO will notify the Seller of the action taken;

(iii) No rights under this contract in any technical data which are not contract data.

(2) The Seller shall have:

(i) The right to withhold proprietary data in accordance with the provisions of this clause; and

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this contract, data it first produces in the performance of this contract, provided the data requirements of this contract have been met as of the date of the private use of such data. The Seller agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or FERMCO, the Seller shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of FERMCO.

(3) Nothing contained in this Rights in Technical Data clause shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(c) Copyrighted material.

(1) The Seller shall not, without prior authorization of the Patent Counsel, establish a claim to statutory copyright in any contract data first produced in the performance of the contract. To the extent such authorization is granted, the Government reserves for itself and others acting

on its behalf a royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit and perform any such data copyrighted by the Seller.

(2) The Seller agrees not to include in the technical data delivered under the contract any material copyrighted by the Seller and not to knowingly include any material copyrighted by others, without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) above. If such royalty-free license is unavailable and the Seller nevertheless determines that such copyrighted material must be included in the technical data to be delivered, rather than merely incorporated therein by reference, the Seller shall obtain the written authorization of FERMCO to include such copyrighted material in the technical data prior to its delivery.

(d) Subcontracting. It is the responsibility of the Seller to obtain from its subcontractors technical data and rights therein, on behalf of the Government, necessary to fulfill the Seller's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Seller shall:

(1) Promptly submit written notice to FERMCO setting forth reasons for the subcontractor refusal and other pertinent information which may expedite disposition of the matter; and

(2) Not proceed with the subcontract without the written authorization of FERMCO.

(e) Withholding of proprietary data. Notwithstanding the inclusion of the Additional Technical Data Requirements clause in this contract or any provision of this contract specifying the delivery of technical data, the Seller may withhold proprietary data from delivery, provided that the Seller furnishes in lieu of any such proprietary data so withheld technical data disclosing the source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements ("Form, Fit and Function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.), or a general description of such proprietary data where "Form, Fit and Function" data are not applicable. The Government shall acquire no rights to any proprietary data so withheld except that such data shall be subject to the "inspection rights" provisions of paragraph (f), and, if included, the "Limited rights in proprietary data" provisions of paragraph (g) and the "Seller licensing" provisions of paragraph (h).

(f) Inspection rights. Except as may be otherwise specified in this contract for specific items of proprietary data which are not subject to this paragraph, the Contracting Officer's representatives, at all reasonable times up to three years after final payment under this contract, may inspect at the Seller's facility any proprietary data withheld under paragraph (e) and not furnish under paragraph (g), if this contract incudes such paragraph, for the purposes of verifying that such data properly fell within the withholding provision of paragraph (e), or for evaluating work performance.

(g) Limited rights in proprietary data. Except as may be otherwise specified in this contract as technical data which are not subject to this paragraph, the Seller shall, upon written request from FERMCO at any time prior to three years after final payment under this contract, promptly deliver to FERMCO or the Government any "proprietary data" withheld pursuant to paragraph (e) of the Rights in Technical Data clause of this contract. The following legend and no other is authorized to be affixed on any "proprietary data" delivered pursuant to this provision, provided the "proprietary data" meets the conditions for initial withholding under paragraph (e) of the Rights in Technical Data clause. FERMCO and the Government will thereafter treat the "proprietary data" in accordance with such legend.

Limited Rights Legend (Apr 1984)

This technical data contains "proprietary data" furnished under "Contract No. _____" with FERMCO which may be duplicated and used by FERMCO or the Government with the express limitations that the "proprietary data" may not be disclosed outside FERMCO or the Government or be used for purposes of manufacture without prior permission of the Seller, except that further disclosure or use may be made solely for the following purposes:

(a) This "proprietary data" may be disclosed for evaluation purposes under the restriction that the "proprietary data" be retained in confidence and not further disclosed;

(b) The "proprietary data" may be disclosed to other Sellers participating in FERMCO's program of which this contract is part, for information or use in connection with the work performed under their contracts and under the restriction that the "proprietary data" be retained in confidence and not be further disclosed; or

(c) This "proprietary data" may be used by FERMCO or others on its behalf for emergency repair or overhaul work under the restriction that the "proprietary data" be retained in confidence and not be further disclosed.

This legend shall be marked on any reproduction of this data in whole or in part.

(h) Seller licensing (Deviation). Except as may be otherwise specified in this contract as technical data not subject to this paragraph, the Seller agrees that upon written application by DOE or FERMCO, it will grant to FERMCO and the Government and responsible third parties, for purpose of practicing a subject of this contract, a nonexclusive license in any contract data which are proprietary data, on terms and conditions reasonable under the circumstances including appropriate provisions for confidentiality.

A.50 DEAR 952.227-73 ADDITIONAL TECHNICAL DATA REQUIREMENTS (APR 1984)

(a) In addition to the technical data specified elsewhere in this contract to be delivered, FERMCO may at any time during the contract performance or within one year after final payment call for the Seller to deliver any technical data first produced or specifically used in the performance of this contract, except technical data pertaining to items of standard commercial design.

(b) The provisions of the Rights in Technical Data clause included in this contract are applicable to all technical data called for under this Additional Technical Data Requirements clause. Accordingly, nothing contained in this clause shall require the Seller to actually deliver any technical data, the delivery of which is executed by paragraph (e) of the Rights in Technical Data clause.

(c) When technical data are to be delivered under this clause, the Seller will be compensated for appropriate costs for converting such data into the prescribed form for reproduction, and for delivery.

A.51 DEAR 927.300(a) (41 CFR 9-9.107-6)PATENT RIGHTS-LONG FORM (DEVIATION) (APR 1984)

(a) Definitions.

(1) "Subject invention" means any invention or discovery of the Seller conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine manufacture, design or composition of matter, or any new and useful improvement thereof or any variety of plants, whether patented or unpatented under the Patent Laws of the United States of America or any foreign country.

(2) "Contract" means any contract, grant, agreement, understanding, or other arrangement, which includes research, development, or demonstration work, and includes any assignment or substitution of parties.

(3) "States and domestic municipal Governments" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivision and agencies thereof.

(4) "Government Agency" includes an executive department, independent commission, board, office, agency, administration, authority, government corporation, or other government establishment of the Executive Branch of Government of the United States of America.

(5) "To the point of practical application" means to manufacture, in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(6) "Patent Counsel" means the Department of Energy Patent Counsel assisting the procuring activity.

(b) Allocation of principal rights.

(1) Assignment to the Government. (i) The Seller agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Seller under paragraphs (b)(2) and (c) of this clause.

(2) Greater rights determinations. The Seller or the employee-inventor with authorization of the Seller may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (c) of this clause on identified inventions in accordance with 41 CFR 9-9.109-6(d). Such requests must be submitted to Patent Counsel (with notification by Seller to FERMCO) at the time of the first disclosure pursuant to paragraph (e)(2) of this clause, or not later than 9 months after conception or first actual reduction to practice, whichever occurs first, or such longer periods as may be authorized by Patent Counsel (with notification by Seller to FERMCO) for good cause shown in writing by the Seller.

(c) Minimum rights to the Seller.

(1) Seller license. The Seller reserves a revocable, nonexclusive, paid-up license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. The license shall extend to the Seller's domestic subsidiaries and affiliates, if any, within the corporate structure of which the Seller is a part and shall include the right to grant sublicenses of the same scope to the extent the Seller was legally obligated to do so at the time the contract was awarded. The license shall be transferable only with approval of DOE except when transferred to the successor of that part of the Seller's business to which the invention pertains.

(2) Revocation limitations. The Seller's nonexclusive license retained pursuant to paragraph (c)(1) of this clause and sublicenses granted thereunder may be revoked or modified by DOE, either in whole or in part, only to the extent necessary to achieve expeditious practical application of the subject invention under DOE's published licensing regulations (10 CFR 781), and only to the extent an exclusive license is actually granted. This license shall not be revoked in that field of use and/or the geographical areas in which the Seller, or its sublicensee, has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public, or is expected to do so within a reasonable time.

(3) Revocation procedures. Before modification or revocation of the license or sublicense, pursuant to paragraph (c)(2) of this clause, DOE shall furnish the Seller a written notice of its intention to modify or revoke the license and any sublicense thereunder, and the Seller shall be allowed 30 days, or such longer periods as may be authorized by the Patent Counsel (with notification by Seller to FERMCO) for good cause shown in writing by the Seller, after such notice to show cause why the license or any sublicense should not be modified or revoked. The Seller shall have the right to appeal, in accordance with 10 CFR 781, any decision concerning the modification or revocation of his license or any sublicense.

(4) Foreign patent rights. Upon written request to Patent Counsel (with notification by Seller to FERMCO), and subject to DOE security regulations and requirements, there shall be reserved to the Seller, or the employee-inventor with authorization of the Seller, the patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights provided:

(i) The recipient of such rights, when specifically requested by DOE and three years after issuance of a foreign patent disclosing said subject invention, shall furnish DOE a report setting forth:

(A) The commercial use that is being made, or is intended to be made, of said invention, and

(B) The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.

(ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and the States and domestic municipal governments, unless the Head of the Agency or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal Governments.

(iii) Subject to the rights granted in (c)(1), (2) and (3) of this clause, the Head of the Agency or designee shall have the right to terminate the foreign patent rights granted in this paragraph (c)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Head of the Agency or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.

(iv) Subject to the rights granted in (c)(1), (2) and (3) of this clause, the Head of the Agency or designee shall have the right, commencing four years after foreign patent rights are accorded under this paragraph (c)(4), to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms

reasonable under the circumstances, and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing:

(A) If the Head of the Agency or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Head of the Agency or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or

(B) Unless the recipient of such rights demonstrates to the satisfaction of the Head of the Agency or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.

(d) Filing of patent applications.

(1) With respect to each subject invention in which the Seller or the inventor requests foreign patent rights in accordance with paragraph (c)(4) of this clause, a request may also be made for the right to file and prosecute the U.S. application on behalf of the Government. If such request is granted, the Seller or inventor shall file a domestic patent application on the invention within 6 months after the request for foreign patent rights is granted, or such longer period of time as may be approved by the Patent Counsel for good cause shown in writing by the requestor. With respect to the invention, the requestor shall promptly notify the Patent Counsel (with notification by Seller to FERMCO) of any decision not to file an application.

(2) For each subject invention on which a domestic patent application is filed by the Seller or inventor, the Seller or inventor shall:

(i) Within 2 months after the filing of a patent application or within 2 months after submission of the invention disclosure, if the patent application has been filed previously, deliver to the Patent Counsel a copy of the application as filed including the filing date and serial number;

(ii) Within 6 months after filing the application or within 6 months after submitting the invention disclosure if the application has been filed previously, deliver to the Patent Counsel a duly executed and approved assignment to the Government, on a form specified by the Government;

(iii) Provide the Patent Counsel with the original patent grant promptly after a patent is issued on the application;

(iv) Not less than 30 days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.

(3) With respect to each subject invention in which the Seller or inventor has requested foreign patent rights, the Seller or inventor shall file a patent application on the invention in each foreign country in which such request is granted, in accordance with applicable statutes and regulations, and within one of the following periods:

(i) Eight months from the date of filing a corresponding United States application, or if such an application if not filed, six months from the date the request was granted.

(ii) Six months from the date a license is granted by the Commissioner of Patents and Trademarks to file the foreign patent application, where such filing has been prohibited by security reasons; or

(iii) Such longer periods as may be approved by the Patent Counsel for good cause shown in writing by the Seller or inventor.

(4) Subject to the license specified in paragraphs (c)(1), (2) and (3) of this clause, the Seller or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the Seller or inventor fails to have a patent application filed in accordance with paragraph (d)(3) of this clause, or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the Seller or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel, the executed instruments necessary for the conveyance specified in this paragraph.

(e) Invention identification, disclosures, and reports.

(1) The Seller shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records that are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records which show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Seller shall furnish the Contracting Officer a description of these procedures so that the Contracting Officer may evaluate and determine their effectiveness.

(2) The Seller shall furnish the Patent Counsel (with notification by Seller to FERMCO) on a DOE-approved form:

(i) A written report containing full and complete technical information concerning each subject invention within 6 months after conception or first actual reduction to practice, whichever occurs first in the course of or under this contract, but in any event, prior to any sale, public use, or public disclosure of such invention known to the Seller. The report shall identify the contract and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains, a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention. The report should also include any request for foreign patent rights under paragraph (c)(4) of this clause and any request to file a domestic patent application under (d)(1) of this clause. However, such request shall be made within the period set forth in paragraph (b)(2) of this clause. When an invention is reported under this paragraph (e)(2)(i), it shall be presumed to have been conceived or first actually reduced to practice in the course of or under the contract, unless the Seller contends it was not so made, in

accordance with paragraph (g)(2)(ii) of this clause.

(ii) Upon request, but not more than annually, interim reports on a DOE-approved form listing subject inventions and subcontracts award(s) containing a Patent Rights clause for that period and certifying that:

(A) The Seller's procedures for identifying and disclosing subject inventions as required by this paragraph (e) have been followed throughout the reporting period;

(B) All subject inventions have been disclosed or that there are no such inventions; and

(C) All subcontracts containing a Patent Rights clause have been reported or that no such subcontracts have been awarded;

(iii) A final report on a DOE-approved form within three months after completion of the contract work listing all subject inventions and all subcontracts awarded containing a Patent Rights clause and certifying that:

(A) All subject inventions have been disclosed or that there were no such inventions; and

(B) All subcontracts containing a Patent Rights clause have been reported or that no such subcontracts have been awarded.

(3) The Seller shall obtain patent agreements to effectuate the provisions of this clause from all persons in its employ who perform any part of the work under this contract except nontechnical personnel, such as clerical employees and manual laborers.

(4) The Seller agrees that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause. If the Seller is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures until the expiration of the time period specified in paragraph (d)(1) of this clause, but in no event shall the Government or its employees be liable for any publication thereof.

(f) Publication.

It is recognized that during the course of the work under this contract, the Seller or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of the DOE or the Seller, patent approval for release or publication shall be secured from Patent Counsel through FERMCO prior to any such release or publication.

(g) Forfeiture of rights in unreported subject inventions.

(1) The Seller shall forfeit to the Government, at DOE's request, all rights in any subject invention which the Seller fails to report to Patent Counsel (with notification by Seller to FERMCO) within 6 months after the time the Seller:

(i) Files or causes to be filed a United States or foreign patent application thereon; or

(ii) Submits the final report required by paragraph (e)(2)(iii) of this clause, whichever is later.

(2) However, the Seller shall not forfeit rights in a subject invention if, within the time specified, in (1)(i) or (1)(ii) of this paragraph (g), the Seller:

(i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the same to Patent Counsel (with notification by Seller to FERMCO); or

(ii) Contending that the invention is not a subject invention, the Seller nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel (with notification by Seller to FERMCO); or

(iii) Establishes that the failure to disclose did not result from the Seller's fault or negligence.

(3) Pending written assignment of the patent application and patents on a subject invention determined by DOE to be forfeited the Seller shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (g) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

(h) Examination of records relating to inventions.

(1) The Contracting Officer or his authorized representative, until the expiration of 3 years after final payment under this contract, shall have the right to examine any books (including laboratory notebooks), records, documents, and other supporting data of the Seller which the Contracting Officer reasonably deems pertinent to the discovery or identification of subject inventions or to determine compliance with the requirements of this clause.

(2) The Contracting Officer or his authorized representative shall have the right to examine all books (including laboratory notebooks), records and documents of the Seller relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether any such inventions are subject inventions, if the Seller refuses or fails to:

(i) Establish the procedures of paragraph (e)(l) of this clause; or

(ii) Maintain and follow such procedures; or

(iii) Correct or eliminate any material deficiency in the procedures within thirty days after the Contracting Officer notifies the Seller of such a deficiency.

(i) Withholding of payment (not applicable to subcontracts).

(1) Any time before final payment of the amount of this contract, FERMCO may, if deemed such action warranted, withhold payment

until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if in it's opinion the Seller fails to:

(i) Establish, maintain and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (e)(1) of this clause; or

(ii) Disclose any subject invention pursuant to paragraph (e)(2)(i) of this clause, or

(iii) Deliver the interim reports pursuant to paragraph (e)(2)(ii) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (j)(5) of this clause; or

(v) Convey to the Government, using a DOE-approved form, the title and/or rights of the Government in each subject invention as required by this clause.

(2) The reserve or balance shall be withheld until FERMCO has determined that the Seller has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made by FERMCO before the Seller delivers to Patent Counsel all disclosures of subject inventions and other information required by (e)(2)(i) of this clause, the final report required by (e)(2)(iii) of this clause, and Patent Counsel has issued a patent clearance certification to FERMCO.

(4) FERMCO may, at its discretion, decrease or increase the sums withheld up to the maximum authorized above. If the Seller is a non-profit organization, the maximum amount that may be withheld under this paragraph shall not exceed $50,000 or 1 percent of the amount of this contract, whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to FERMCO or the Government under this contract.

(j) Subcontracts.

(1) For the purpose of this paragraph the term "Seller" means the party awarding a subcontract and the term "subcontractor" means the party being awarded a subcontract, regardless of tier.

(2) The Seller will include in subcontracts in which the subcontractor is neither a small business firm or a nonprofit organization the Patent Rights clause of 41 CFR 9-9.107-5(a), modified to identify the parties. In the event of a refusal by such subcontractor to accept this clause, or if in the opinion of the Seller this clause is inconsistent with DOE's patent policies, the Seller:

(i) Shall promptly submit written notice to FERMCO setting forth reasons for the subcontractor refusal and other pertinent information which may expedite disposition of the matter; and

(ii) Shall not proceed with the subcontract without written authorization of FERMCO.

(iii) In all other subcontracts, the Seller shall use a patent clause as directed by FERMCO.

(3) Except as may be otherwise provided in this clause, the Seller shall not, in any subcontract by using a subcontract as consideration therefor, acquire any rights in its subcontractor's subject invention for the Seller's own use (as distinguished from such rights as may be required solely to fulfill the Seller's contract obligations to FERMCO in the performance of this contract).

(4) All invention disclosures, reports, instruments, and other information required to be furnished by the Subcontractor to DOE, under the provisions of a Patent Rights clause in any subcontract hereunder may, at the discretion of FERMCO, be furnished to the Seller for transmission to DOE.

(5) The Seller shall promptly notify FERMCO in writing upon the award of any subcontract containing a Patent Rights clause by identifying the subcontractor, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon the request of FERMCO, the Seller shall furnish a copy of the subcontract.

(6) The Seller shall identify all subject inventions of the subcontractor of which it acquires knowledge in the performance of this contract and shall notify the Patent Counsel (with notification by Seller to FERMCO) promptly upon the identification of the inventions.

(7) It is understood that the Government is a third party beneficiary of any subcontract clause granting rights to the Government in subject inventions, and the Seller hereby assigns to the Government all rights that the Seller would have to enforce the subcontractor's obligations for the benefit of the Government with respect to subject inventions. The Seller shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Government regarding subject inventions.

(k) Background Patents.

(1) "Background Patent" means a domestic patent covering an invention or discovery which is not a subject invention and which is owned or controlled by the Seller at any time through the completion of this contract:

(i) Which the Seller, but not the Government, has the right to license to others without obligation to pay royalties thereon, and

(ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.

(2) The Seller agrees to and does hereby grant to the Government a royalty-free, nonexclusive, license under any background patent for purposes of practicing remediation, decontamination or decommissioning of the Government facilities.

(3) The Seller also agrees that upon written application by DOE, it will grant to responsible parties for purposes of practicing a subject of this contract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Seller

believes that exclusive or partially exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for approval of such licensing by the Seller.

(l) Atomic energy.

(1) No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by the Seller or its employees with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) Except as otherwise authorized in writing by the Contracting Officer, the Seller will obtain patent agreements to effectuate the provisions of paragraph (l)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(m) Limitation of rights.

Nothing contained in this patent rights clause shall be deemed to give the Government any rights with respect to any invention other than a subject invention except as set forth in the Patent Rights clause of this contract with respect to background patents and, if included, the facilities licenses.

A.52 DOE PR 9-9.107-5(H) FACILITIES LICENSE (DEVIATION) (APR 1984)

(n) Facilities license.

As used in this (n) paragraph "facility" means any facility of the Government at which the remediation, decontamination or decommissioning technology practiced under this contract or any subcontract thereunder may be utilized by or for the Government.

(1) In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Seller agrees to and does hereby grant to the Government an irrevocable, nonexclusive paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Seller which are owned or controlled by the Seller at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured by the facility (1) to practice or to have practiced by or for DOE at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(2) To the extent that the Seller or any of its subcontractors intend to employ or utilize patented technology which it does not own or control and which it knows or should know is patented to others, the subcontractor shall be responsible for obtaining a license to utilize such patented technology by and for the Government on terms and conditions which have the written approval of the Contracting Officer.

*This clause supplements DEAR 927.300(a) Patent Rights - Long Form (Deviation) (APR 1984).

A.53 DEAR 952.227-71 PATENT RIGHTS - SMALL BUSINESS FIRMS OR NONPROFIT ORGANIZATIONS (APR 1987)

(a) Definitions.

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code (U.S.C.) or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(2) "Subject Invention" means any invention of the Seller conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of Plant Variety Protection Act, 7 U.S.C. 2401 (d) must also occur during the period of contract performance.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a small business concern as defined at Section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standard for small business concerns involved in Government procurement and subcontracting, at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501 (a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) "Patent Counsel" means DOE Patent counsel assisting the DOE contracting activity.

(b) Allocation of principal rights.

(1) The Seller may retain the entire right, title and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Seller retains title, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) (Reserved.)

(c) Invention disclosure, election of title and filing or patent application by Seller.

(1) The Seller will disclose each subject invention to the Patent Counsel within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the Patent Counsel shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the

and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Patent Counsel, the Seller will promptly notify the Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Seller.

(2) The Seller will elect in writing whether or not to retain title to any such invention by notifying the Patent Counsel within two years of disclosure to the Patent Counsel. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by Patent Counsel to a date that is no more than sixty days prior to the end of the statutory period.

(3) The Seller will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title, or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Seller will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to the Patent Counsel, election, and filing, under subparagraphs (1), (2), and (3) may, at the discretion of the Patent Counsel be granted.

(d) Conditions when the Government may obtain title.

The Seller will convey to the Government, upon written request, title to any subject invention:

(1) If the Seller fails to disclose or elect title to the subject invention within the times specified in (c) above, or elects not to retain title; provided that the Government may only request title within 60 days after learning of the failure of the Seller to disclose or elect within the specified times;

(2) In those countries in which the Seller fails to file patent applications within the times specified in (c) above; provided, however, that if the Seller has filed a patent application in a country after the time specified in (c) above prior to its receipt of the written request of the Patent Counsel, the Seller shall continue to retain title in that country; or

(3) In any country in which the Seller decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum rights to Seller and protection of the Seller's right to file.

(1) The Seller will retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the Seller fails to disclose the subject invention within times specified in (c) above. The Seller's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Seller is a part and includes the right to grant sublicenses of the same scope to the extent the Seller was legally obligated to do so at the time the contract was awarded. The license is transferred only with the approval of the Government except when transferred to the successor of the part of the Seller's business to which the invention pertains.

(2) The Seller's domestic licenses may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR 404 and 10 CFR 781. This license will not be revoked in the field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonable accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Seller, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the Seller a written notice of its intention to revoke or modify the license, and the Seller will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Seller) after the notice to show cause why the license should not be revoked or modified. The Seller has the right to appeal, in accordance with 37 CFR 404 and 10 CFR Part 781, any decision concerning the revocation or modification of its license.

(f) Seller's action to protect the Government's interest.

(1) The Seller agrees to execute or to have executed and promptly deliver to the Patent Counsel all instruments necessary to:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Seller elects to retain title, and

(ii) Convey title to the Government when requested under (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Seller agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Seller each subject invention made under this contract in order that the Seller can comply with the disclosure provisions of (c) above and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information required by (c)(1) above. The Seller shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.

(3) The Seller will notify the Patent counsel of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The Seller agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement "This invention was

made with the Government's support under (identify the Contract) awarded by FERMCO. The Government has certain rights in this invention."

(5) The Seller agrees to:

(i) Upon request, provide a report prior to the close-out of the contract listing all subject inventions or stating that there were none;

(ii) Provide, upon request, a copy of the patent application, filing date, serial number and title, patent number and issue date for any subject invention in any country in which the Seller has applied for a patent; and

(iii) Provide upon request, but not more than annually, listing of all subject inventions which were disclosed to FERMCO or the Government during the applicable reporting period.

(g) Subcontracts.

(1) The Seller will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or a domestic nonprofit organization. The subcontractor will retain all rights provided for the Seller in this clause, and the Seller will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Seller will include in all other subcontracts, regardless of tier, for experimental, developmental, demonstration or research work the patent rights clause of 41 CFR 9-9.107-5(a) or 9-9.107-6 as appropriate, modified to identify the parties.

(3) In the case of a subcontract at any tier, FERMCO, the subcontractor, and the Seller agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and FERMCO with respect to those matters covered by this clause.

(h) Reporting on utilization of subject inventions.

The Seller agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Seller or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Seller, and such other data and information as DOE and FERMCO may reasonably specify. The Seller also agrees to provide additional reports as may be requested by DOE and FERMCO in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Seller.

(i) Preference for United States industry.

Notwithstanding any other provision of this clause, the Seller agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Seller or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in rights.

The Seller agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of DOE to require the Seller, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

(1) Such action is necessary because the Seller or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Seller, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by federal regulations and such requirements are not reasonably satisfied by the Seller, assignee, or licensees; or

(4) Such action is necessary because the agreement required by (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for contracts with nonprofit organizations.

If the Seller is a non profit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions provided that such assignee will be subject to the same provisions as the Seller;

(2) The Seller will share royalties collected on a subject invention with the inventor, including Federal employees co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Seller with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education and;

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the Seller determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals

from applicants that are not small business firms; provided that the Seller is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Seller. However, the Seller agrees that the Secretary of Commerce may review the Seller's licensing program and decisions regarding small business applicants, and the Seller will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary of Commerce's review discloses that the Seller could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communications.

The DOE central point of contact for communications or matters relating to this clause is the Patent Counsel.

A.54 SAFETY

(a) Seller shall take necessary safety and other precautions to protect property and persons from damage, injury or illness arising out of the performance of the work under this contract. Seller shall comply strictly with local, municipal, state and federal laws, orders and regulations pertaining to health or safety which are applicable to Seller or to the work, including without limitation the Occupational Safety and Health Act of 1970 (84 U.S. Statutes 1590), as amended, and any state plans approved thereunder, and regulations thereunder, to the extent applicable, and Seller warrants the materials, equipment and facilities, whether temporary or permanent, furnished by Seller in connection with the performance of the work shall comply therewith. At all times while any of Seller's employees, agents or subcontractors are on the Government's premises, Seller shall be solely responsible for providing them with a safe place of employment, and Seller shall inspect the places where its employees, agents or subcontractors are or may be present on the Government's premises and shall promptly take action to correct conditions which are or may become an unsafe place of employment for them.

(b) Accidents, injuries and illnesses requiring medical attention other than first aid, damage to property of FERMCO, Government or Seller, and fires shall be orally reported to FERMCO at the time of the incident. Written reports, satisfactory in form and content to FERMCO, shall be submitted by Seller promptly after each incident.

(c) Seller shall maintain in form and content approved by FERMCO, jobsite accident, injury and illness statistics which shall be available for inspection by, and submitted to, FERMCO upon its written request.

A.55 FERMCO SUBSTANCE ABUSE PROGRAM

(a) The Seller will:

(1) Use its best efforts to assure that all of its workers assigned to work under this contract are drug and alcohol free;

(2) Require its workers under this contract who are permitted access to any FERMCO facility, to submit to FERMCO random urinalysis testing for the presence of drugs and to FERMCO random breathalyzer testing for the presence of alcohol promptly whenever Notice of Testing is given to the Seller by FERMCO;

(3) Remove immediately from work under this contract any worker with respect to whom the Medical Review Officer determines to have tested positive for the presence of drugs and/or alcohol;

(4) Remove immediately from work under this contract any worker who fails to present himself or herself to FERMCO Medical Department for drug and/or alcohol testing promptly when Notice of Testing is given by FERMCO to the Seller with respect to such worker, or who otherwise fails to cooperate with the FERMCO drug/alcohol testing program;

(5) Remove from work under this Contract any employee who, intentionally or unintentionally, whether by action or inaction, causes the urinalysis testing or the breathalyzer testing of any employee to be frustrated, as, for example, by miscommunicating or by failing to communicate appropriately information regarding Notice of Testing with respect to any Seller employee.

(b) A worker who has been removed, or required to be removed, from work under this contract pursuant to this clause will not be permitted to return to work under this contract except at FERMCO's sole discretion and upon determination by the Medical Review Officer that the worker has completed successfully an Employee Assistance Program approved by the Medical Review Officer, or that the worker is otherwise fit to perform work under this contract.

(c) Any urinalysis testing and any breathalyzer testing required under this contract will be conducted either by, or at the direction of, the FERMCO Medical Department.

A.56 GOVERNING LAW

Irrespective of the place of performance, this contract will be construed and interpreted according to the Federal Common Law of Government Contracts as enunciated and applied by Federal judicial bodies, Boards of Contract Appeals and quasi-judicial agencies of the Federal Government. To the extent that the Federal Common Law of Government Contracts is not dispositive, the law of the State of Ohio shall apply. In the event that either party hereto must resort to litigation to enforce a right or remedy conferred by law, equity or the provisions of this contract, the parties hereby consent to the action being brought in the court of competent jurisdiction whose situs is in the County of Hamilton, State of Ohio.

A.57 FAR 52.246-4 INSPECTION OF SERVICES--FIXED-PRICE (FEB 1992)

(a) Definitions. "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance, of services.

(b) The Seller shall provide and maintain an inspection system acceptable to FERMCO covering the services under this contract. Complete records of all inspection work performed by the Seller shall be maintained and made available to FERMCO during contract performance and for as long afterwards as the contract requires.

(c) FERMCO has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. FERMCO shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If FERMCO performs inspections or tests on the premises of the Seller or a subcontractor, the Seller shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with contract

requirements. FERMCO may require the Seller to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, FERMCO may (1) require the Seller to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the services performed.

(f) If the Seller fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, FERMCO may (1) by contract or otherwise, perform the services and charge to the Seller any cost incurred by FERMCO that is directly related to the performance of such service or (2) terminate the contract for default.

A.58 FAR 52.246-2 INSPECTION OF SUPPLIES (JULY 1985)

(a) Definition. "Supplies," as used in this article, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

(b) The Seller shall provide and maintain an inspection system acceptable to FERMCO covering supplies under this contract and shall tender to FERMCO for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Seller to be in conformity with contract requirements. As part of the system, the Seller shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to FERMCO during contract performance and for as long afterwards as the contract requires. FERMCO may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Seller of the obligations under the contract.

(c) FERMCO has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. FERMCO shall perform inspections and tests in a manner that will not unduly delay the work. FERMCO assumes no contractual obligation to perform any inspection and test for the benefit of the Seller unless specifically set forth elsewhere in this contract.

(d) If FERMCO performs inspection or test on the premises of the Seller or a subcontractor, the Seller shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, FERMCO shall bear the expense of FERMCO inspections or tests made at other than the Seller's or subcontractor's premises; provided, that in case of rejection, FERMCO shall not be liable for any reduction in the value of inspection or test samples.

(e) (1) When supplies are not ready at the time specified by the Seller for inspection of test, FERMCO may charge to the Seller the additional cost of inspection or test.

(2) FERMCO may also charge the Seller for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

(f) FERMCO has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. FERMCO may reject nonconforming supplies with or without disposition instructions.

(g) The Seller shall remove supplies rejected or required to be corrected. However, FERMCO may require or permit correction in place, promptly after notice by and at the expense of the Seller. The Seller shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

(h) If the Seller fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, FERMCO may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Seller or (2) terminate the contract for default. Unless the Seller corrects or replaces the supplies within the delivery schedule, FERMCO may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

(i) (1) If this contract provides for the performance of quality assurance at source, and if requested by FERMCO, the Seller shall furnish advance notification of the time (i) when Seller inspection or tests will be performed in accordance with the terms and conditions of the contract and (ii) when the supplies will be ready for FERMCO inspection.

(2) FERMCO's request shall specify the period and method of the advance notification and the FERMCO representative to whom it shall be furnished. Requests shall not require more than 7 workdays of advance notification.

(j) FERMCO shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. FERMCO failure to inspect and accept or reject the supplies shall not relieve the Seller from responsibility, nor impose liability on FERMCO, for nonconforming supplies.

(k) Inspections and tests by FERMCO do not relieve the Seller of responsibility for defects or other failures to meet contract requirement discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, FERMCO, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Seller (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Seller's plant at FERMCO's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Seller and FERMCO; provided, that FERMCO may require a reduction in contract price if the Seller fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Seller of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if FERMCO elects not to require correction or replacement. When supplies are returned to the Seller, the Seller shall bear the transportation cost from the original point of delivery to the Seller's plant and return to the original point when that point is not the Seller's plant. If the Seller fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as FERMCO may authorize in writing) after receipt of notice from FERMCO specifying such failure, FERMCO shall have the right by contract or otherwise to replace or correct such supplies and charge to the Seller the cost occasioned FERMCO thereby.

A.59 FAR 52.246-16 RESPONSIBILITY FOR SUPPLIES (APR 1984)

(a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where FERMCO takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss or of damage to supplies shall remain with the Seller until, and shall pass to the Government upon—

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Acceptance by FERMCO or delivery of the supplies to FERMCO at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Seller until cure or acceptance. After cure or acceptance, paragraph (b) above shall apply.

(d) Under paragraph (b) above, the Seller shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of FERMCO acting within the scope of their employment.

A.60 DEAR 970.5204-59 WHISTLEBLOWER PROTECTION FOR SELLER EMPLOYEES (JAN 1993)

(a) The Seller shall comply with requirements of the "DOE Contractor Employee Protection Program" at 10 CFR Part 708

(b) The Seller shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts, at all tiers, with respect to work performed on-site at a DOE-owned or leased facility, as provided for at 10 CFR Part 708

A.61 FAR 52.225-11 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (MAY 1992)

(a) Unless advance written approval of FERMCO is obtained, the Seller shall not acquire for use in the performance of this contract-

(1) Any supplies or services originating form sources within the communist areas of North Korea, Vietnam, Cambodia, or Cuba;

(2) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba; or

(3) Arms, Ammunition, or military vehicles produced in South Africa, or manufacturing data from such articles.

(b) The Seller shall not acquire for use in the performance of this contract supplies or services originating from sources within Iraq, any supplies that are or were located in or transported from or through Iraq, or any supplies or services from entities controlled by the Government of Iraq.

(c) The Seller agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder.

A.62 FAR 52.215-33 ORDER OF PRECEDENCE (JAN 1986)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) representations and other instructions; (c) contract clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

SECTION B
SECTION B APPLIES IF THE PRICE OF THIS CONTRACT EXCEEDS $2,500

B.1 FAR 52.222-36 AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (APR 1984)

(a) General.

(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 handicap. The Seller agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap 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) 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.

(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 handicapped individuals 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 Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through FERMCO.

(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 physically and mentally handicapped individuals.

(c) Noncompliance. If the Seller does not comply with the 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 $2,500 unless exempted by rules, regulations, or orders of the Secretary. The Seller shall act as specified by FERMCO to enforce the terms, including action for noncompliance.

B.2 FAR 52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989) **NOTE: Applicable if the principal purpose of the contract is to furnish services through the use of service employees as defined under Department of Labor regulations at Title 29, Code of Federal Regulations, Part 4.**

(a) Definitions. "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).

"Seller," as used in this clause or in any subcontract, shall be deemed to refer to "the person or organization entering into this contract with FERMCO."

"Service employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Seller or subcontractor and such persons.

(b) Applicability. This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

(c) Compensation.

(1) Each service employee employed in the performance of this contract by the Seller or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2) (i) If a wage determination is attached to this contract, the Seller shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Seller prior to the performance of contract work by the unlisted class of employee. The Seller shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to FERMCO no later than 30 days after the unlisted class of employee performs any contract work. FERMCO shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the FERMCO recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour division shall be transmitted to FERMCO who shall promptly notify the Seller of the action taken. Each

affected employee shall be furnished by the Seller with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv) (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a Seller succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Seller shall advise FERMCO of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined pursuant to paragraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(3) Adjustment of Compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determination issued by the Wage and Hour Division.

(d) Obligation to Furnish Fringe Benefits. The Seller or Seller's subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) Minimum Wage. In the absence of a minimum wage attachment for this contract, neither the Seller nor any of Seller's subcontractor shall pay any person performing work under the contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the Seller or any Seller's subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(f) Successor Contracts. If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Seller nor any Seller's subcontractors (under this contract), shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Seller or Seller's subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR Part 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR Part 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR Part 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Seller's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen 401(1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) Notification to Employees. The Seller and any Seller's subcontractors under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of Section 2(a)(4) of the Act and of this contract.

(h) Safe and Sanitary Working Conditions. The Seller or Seller's subcontractors shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Seller or Seller's subcontractors which are unsanitary, hazardous or dangerous to the health or safety of service employees. The Seller or Seller's subcontractors shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) Records. (1) The Seller and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act—

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of services employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Seller's employees which had been furnished to the Seller as prescribed by paragraph (n) of this clause.

(2) The Seller shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, FERMCO, upon direction of the Department of Labor and notification to the Seller, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The Seller shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) Pay Periods. The Seller shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) Withholding of Payments and Termination of Contract. FERMCO shall withhold or cause to be withheld from the Seller under this or any other FERMCO contract with the Seller such sums as an appropriate official of the Department of Labor requests or such sums as FERMCO decides may be necessary to pay underpaid employees employed by the Seller or Seller's subcontractors. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, FERMCO, may after authorization or by direction of the Department of Labor and written notification to the Seller, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, FERMCO may enter into other contracts or arrangements for completion of work, charging the Seller in default with any additional cost.

(l) Subcontracts. The Seller agrees to insert this clause in all subcontracts subject to the Act.

(m) Collective Bargaining Agreements Applicable to Service Employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the Seller or Seller's subcontractors under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Seller shall report such fact to FERMCO, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof.

(n) Seniority List. Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Seller (predecessor) or successor (29 CFR 4.173), the incumbent Seller shall furnish to FERMCO a certified list of the names of all service employees on the Seller's or Seller's subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Sellers of each such service employee. FERMCO shall turn over such list to the successor Seller at the commencement of the succeeding contract.

(o) Rulings and Interpretations. Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) Seller's Certification. (1) By entering into this contract, the Seller (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Seller's firm is a person or firm ineligible to be awarded FERMCO contracts by virtue of the sanctions imposed pursuant to Section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a FERMCO contract pursuant to Section 5 of the Act.

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

(q) Variations, Tolerances, and Exemptions involving Employment. Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of FERMCO business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by Section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(r) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Seller as to his entire work force under the registered program.

(s) Tips. An employee engaged in an occupation in which he or she customarily and regularly receives more than $30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by Section 2(a)(1) or Section 2(b)(1) of the Act in accordance with Section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of such credit may not exceed $1.34 per hour beginning January 1, 1981. To use this provision:

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) Disputes Concerning Labor Standards. The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 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 subcontractor's and FERMCO, the U.S. Department of Labor, or the employees or their representatives.

B.3 FAR 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)

NOTE: Applicable if the clause at FAR 52.222-41, SERVICE CONTRACT ACT OF 1965, is applicable.

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

THIS STATEMENT IS FOR INFORMATION ONLY: IT IS NOT A WAGE DETERMINATION.

Employee Class	Monetary Wage-Fringe Benefits

B.4 FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (MAR 1986)

NOTE: Applicable to contracts which involve the employment of laborers or mechanics.

(a) Overtime requirements. No Seller 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 ½ 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