PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 50 U.S.C. 2401

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Parent topic: SUBCHAPTER H—CLAUSES AND FORMS

Subpart 952.0—General

952.000 Scope of part.

This part implements FAR part 52 which sets forth contract clauses for use in connection with the acquisition of personal property and nonpersonal services (including construction), and supplements, as well as modifies, FAR part 52 by prescribing certain modifications to be made to FAR clauses when used in Department of Energy (DOE) contracts and specifying certain Department of Energy Acquisition Regulation clauses to be used in addition to or in place of such FAR clauses.

952.001 General policy.

It is DOE policy to use the prescribed FAR and DOE contract clauses wherever practicable. Uniformity in the use of contract clauses helps to ensure impartial treatment of all contractors, expedites negotiation and contract review, and facilitates contract administration.

Subpart 952.2—Text of Provisions and Clauses

952.202 Clauses related to definitions.

952.202-1 Definitions.

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

(c) When a solicitation provision or contract clause uses a word or term that is defined in the Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9), the word or term has the same meaning as the definition in 48 CFR 902.101 or the definition in the part, subpart, or section of 48 CFR chapter 9 where the provision or clause is prescribed in effect at the time the solicitation was issued, unless an exception in (a) applies.

952.203-1 Identification of contractor employees.

As prescribed at 903.1004, insert the following clause:

Identification of Contractor Employees [December 2024]

Contractors and their employees shall be properly identified in communications (*e.g.,* email communications, texts, video and teleconference calls, etc.) and in meetings so that all participants can differentiate between Federal employees and contractor employees.

(End of clause)

952.203-70 Whistleblower protection for contractor employees.

As prescribed in 903.971, insert the following clause:

Whistleblower Protection for Contractor Employees (DEC 2000)

(a) The Contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

(b) The Contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

(End of clause)

952.204 Clauses related to administrative matters.

952.204-2 Security requirements.

As prescribed in 904.404(d)(1), insert the following clause:

Security Requirements [December 2024]

(a) *Definitions. Classified Information* means information that is classified as Restricted Data or Formerly Restricted Data or Transclassified Foreign Nuclear Information under the Atomic Energy Act of 1954, or information identified as National Security Information and therefore determined to require protection against unauthorized disclosure under E.O. 13526, Classified National Security Information, as amended, or prior or successive Executive orders.

Contracting Officer means the DOE Contracting Officer.

Contract, when this clause is used in a subcontract, means subcontract.

Contractor, when this clause is included in a subcontract, means subcontractor.

Cyber system means any combination of facilities, equipment, personnel, procedures, and communications integrated to provide cyber services; examples include business systems, control systems, and access control systems (National Infrastructure Protection Plan, 2009).

Restricted Data means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954 (42 U.S.C. 2162).

Formerly Restricted Data means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense (DoD) that the information—

(1) Relates primarily to the military utilization of atomic weapons; and

(2) Can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.

National Security Information means information that has been determined, pursuant to E.O. 13526, Classified National Security Information, as amended, or any predecessor or successor order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.

Special Access Program means any program that is established to control access, distribution, and to provide protection for particularly sensitive classified information beyond that normally required for RESTRICTED DATA, TOP SECRET, SECRET, or CONFIDENTIAL information.

Special nuclear material means—

(1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material that, pursuant to section 51 of the Atomic Energy Act of 1954 (42 U.S.C. 2071) has been determined to be special nuclear material, but does not include source material; or

(2) Any material artificially enriched by any of the foregoing, but does not include source material.

(b) *Responsibility.* The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material and special nuclear material) which are in the Contractor's possession in connection with the performance of work under this contract against sabotage, espionage, loss or theft. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter or special nuclear material in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and classification levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the classified matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(c) *Regulations.* The Contractor shall comply with all security and classification regulations and contract requirements of DOE.

(d) *Access authorizations of personnel.*

(1) The Contractor shall not permit any individual to have access to any classified information, special nuclear material, or Special Access Program (SAP) information, except in accordance with the Atomic Energy Act of 1954, as amended, and the DOE's regulations and contract requirements applicable to the particular level and category of classified information or particular category of special nuclear material.

(2) The Contractor shall conduct a thorough review or background review, as defined at 48 CFR 904.401, of any uncleared applicants or employees, and must test individuals for illegal drugs prior to selecting them for positions requiring DOE access authorizations.

(i) The review must—

(A) Verify applicant's or employee's educational backgrounds, including any high school diplomas obtained within the past five years, and degrees or diplomas granted by an institution of higher learning;

(B) Contact listed employers for the last three years and listed personal references;

(C) Conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Contractor is located; and

(D) Conduct a credit check and other checks as appropriate.

(ii) For DOE access authorization, contractor reviews are not required for applicants who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968 of August 2, 1995, as amended, Access to Classified Information, sections 3.3(c) and (d).

(iii) In collecting and using this information to make a determination as to whether it is appropriate to select an uncleared applicant or uncleared employee to a position requiring an access authorization, the Contractor must comply with all applicable laws, regulations, and Executive orders, including those—

(A) Governing the processing and privacy of an individual's information, such as the Fair Credit Reporting Act, Americans with Disabilities Act Amendments Act of 2008 (ADAAA), and Health Insurance Portability and Accountability Act; and

(B) prohibiting discrimination in employment, such as under the Genetic Information Nondiscrimination Act of 2008, ADAAA, Title VII and the Older Workers Benefit and Protection Act of 1990, including with respect to pre- and post-offer of employment disability related questioning.

(iv) In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug, as defined in 10 CFR 707.4. All positions requiring access authorizations are deemed *testing designated positions* in accordance with 10 CFR part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence from their system of any illegal drug.

(v) When an uncleared applicant or uncleared employee receives an offer of employment for a position that requires a DOE access authorization, the Contractor shall not place that individual in such a position prior to the individual's receipt of a DOE access authorization, unless an approval has been obtained from the head of the cognizant local DOE security office. If the individual is hired and placed in the position prior to receiving an access authorization, the uncleared employee may not be afforded access to classified information or matter or special nuclear material (in categories requiring access authorization) until an access authorization has been granted.

(vi) The Contractor must maintain a record of information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization. Upon request only, the following information will be furnished to the head of the cognizant local DOE Security Office:

(A) The date(s) each Review was conducted;

(B) Each entity that provided information concerning the individual;

(C) A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive orders, including those governing the processing and privacy of an individual's information collected during the review;

(D) A certification that all information collected during the review was reviewed and evaluated in accordance with the Contractor's personnel policies; and

(E) The results of the test for illegal drugs.

(vii) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et seq.;* 18 U.S.C. 793 and 794).

(e) *Foreign ownership, control, or influence (FOCI).*

(1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of FOCI over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, *Certificate Pertaining to Foreign Interests,* executed prior to award of this contract. The Contractor will submit the FOCI information in the format directed by DOE. When completed, the Contractor must sign the SF 328 and submit it to the Contracting Officer. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer and to the cognizant security office.

(2) If a Contractor has changes involving FOCI, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

(3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to FOCI, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to protect any classified information or special nuclear material.

(4) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a FOCI situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to FOCI for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

(f) *Employment announcements.* When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal Government may be required to obtain an access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR part 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a

counterintelligence-scope polygraph examination.

(g) *Flow down to subcontracts.* The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph and related DOE policies, in all subcontracts that will require subcontractor employees to possess access authorizations.

Additionally, the Contractor must require such subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, *Certificate Pertaining to Foreign Interests,* as required in title 48 of the CFR consistent with the clause at 48 CFR 952.204-73, Facility Clearance, and obtain a foreign ownership, control and influence determination prior to award of a subcontract. Facility clearance may be granted prior to award or after award of a subcontract in accordance with the clause at 48 CFR 952.204-73, Facility Clearance. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer.

(End of clause)

952.204-70 Classification/Declassification.

As prescribed in 904.404(d)(2), the following clause shall be included in all contracts which involve classified information:

Classification/Declassification [December 2024]

(a) *Definitions. Classified information* means information that is classified as Restricted Data, Formerly Restricted Data or Transclassified Foreign Nuclear Information under the Atomic Energy Act of 1954, or information identified as National Security Information and therefore determined to require protection against unauthorized disclosure under E.O. 13526, Classified National Security Information, as amended, or prior or successive Executive orders.

Contractor, as used in this clause, includes subcontractors.

Document means any recorded information, regardless of the nature of the medium or the method or circumstances of recording (*e.g.,* email).

Information means facts, data, or knowledge itself.

Material means a product or substance that contains or reveals information, regardless of its physical form or characteristics.

(b) The Contractor shall comply with all provisions of DOE's regulations and DOE directives applicable to work involving the classification and declassification of information, documents, or material. (Note: The decision to classify or declassify information is considered an inherently Governmental function. As such, only Government personnel may serve as Federal Government original classifiers. Both Government and Contractor personnel may serve as derivative classifiers; this involves making decisions based upon classification guidance and, where authorized by DOE directives, portion marked source documents that reflects the decisions of Federal Government. Both Government and Contractor personnel may also serve as derivative declassifiers; this involves making decisions based only on classification guidance).

(c) The Contractor shall ensure that any document or material that may contain classified information is reviewed by either a derivative classifier, or in the case of documents intended for

public release, a classification officer or a specifically designated DC, in accordance with classification regulations, and DOE directives. In accordance with DOE directives DCs must use classification/declassification guidance furnished to the Contractor by the DOE or a portion marked source document, when authorized to determine whether it contains classified information prior to dissemination. For information not addressed in classification/declassification guidance, but whose sensitivity appears to warrant classification, the Contractor shall ensure it is reviewed by a Federal Government original classifier or the Director, Office of Classification in accordance with classification directives or regulations.

(d) The Contractor shall ensure that existing classified documents (containing either Restricted Data, Formerly Restricted Data, Transclassified Foreign Nuclear Information, or National Security Information) in its possession or under its control are periodically reviewed by a Federal Government or Contractor derivative declassifier in accordance with classification regulations, DOE directives and classification/declassification guidance furnished to the Contractor by DOE to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents that no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents that are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access while minimizing security costs.

(e) *Subcontracts.* The Contractor shall insert this clause in any subcontract that involves or may involve access to classified information.

(End of clause)

952.204-71 Sensitive foreign nations controls.

In accordance with 904.404(d)(3), the contracting officer shall include the following clause:

Sensitive Foreign Nations Controls (MAR 2011)

(a) In connection with any activities in the performance of this contract, the Contractor agrees to comply with the “Sensitive Foreign Nations Controls” requirements attached to this contract, relating to those countries, which may from time to time, be identified to the Contractor by written notice as sensitive foreign nations. The Contractor shall have the right to terminate its performance under this contract upon at least 60 days' prior written notice to the Contracting Officer if the Contractor determines that it is unable, without substantially interfering with its polices or without adversely impacting its performance to continue performance of the work under this contract as a result of such notification. If the Contractor elects to terminate performance, the provisions of this contract regarding termination for the convenience of the Government shall apply.

(b) The provisions of this clause shall be included in any subcontracts which may involve making unclassified information about nuclear technology available to sensitive foreign nations.

(End of clause)

952.204-72 Disclosure of information.

As prescribed in 904.404(d)(4) this clause may be used in place of the clauses entitled “Security,” 952.204-2, and “Classification/Declassification,” 952.204-70, in contracts with educational institutions for research involving nuclear technology which could but is not expected to produce classified information or restricted data:

Disclosure of Information (APR 1994)

(a) It is mutually expected that the activities under this contract will not involve classified information. It is understood, however, that if in the opinion of either party, this expectation changes prior to the expiration or terminating of all activities under this contract, said party shall notify the other party accordingly in writing without delay. In any event, the Contractor shall classify, safeguard, and otherwise act with respect to all classified information in accordance with applicable law and the requirements of DOE, and shall promptly inform DOE in writing if and when classified information becomes involved, or in the mutual judgment of the parties it appears likely that classified information or material may become involved. The Contractor shall have the right to terminate performance of the work under this contract and in such event the provisions of this contract respecting termination for the convenience of the Government shall apply.

(b) The Contractor shall not permit any individual to have access to classified information except in accordance with the Atomic Energy Act 1954, as amended, Executive Order 12356, and DOE's regulations or requirements.

(c) The term *Restricted Data* as used in this article means all data concerning the design, manufacture, or utilization of atomic weapons, the production of special nuclear material or the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended.

(End of clause)

952.204-73 Facility clearance.

As prescribed in 904.404(d)(5), insert the following provision in all solicitations and contracts which require the use of Standard Form 328, Certificate Pertaining to Foreign Interests, for contracts or subcontracts subject to the provisions of subpart 904.70:

Facility Clearance [December 2024]

Notices to Offerors and the Contract Requirements of the Successful Offeror (Contractor) Section 2536 of title 10, United States Code, prohibits the award of a contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract unless a waiver is granted by the Secretary of Energy. In addition, a Facility Clearance and foreign ownership, control and influence information are required when the contract or subcontract to be awarded is expected to require employees to have access authorizations.

An offeror who has either a Department of Defense or a Department of Energy Facility Clearance generally need not resubmit the following foreign ownership, control and influence information

unless specifically requested to do so. Instead, provide your DOE Facility Clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office that issued this solicitation.

(a) *Use of Certificate Pertaining to Foreign Interests, Standard Form 328.*

(1) The contract work to be performed by the successful offeror anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the Contractor's (that is, the successful offeror's) organization and access authorizations (security clearances) for Contractor personnel working with the classified information or special nuclear material. To obtain a Facility Clearance the Contractor must submit the Standard Form 328, Certificate Pertaining to Foreign Interests, and all required supporting documents to form a complete Foreign Ownership, Control or Influence (FOCI) Package. The Contractor must submit the FOCI Package in the format directed by DOE. After the FOCI Package is completed, the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer.

(2) Information submitted by the offeror in the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control or influence and will be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.

(3) Following submission of a Standard Form 328 and prior to contract award, the successful offeror/Contractor shall immediately submit to the Contracting Officer written notification of any changes in the extent and nature of FOCI information it submitted that could affect its answers to the questions in Standard Form 328. Following award of a contract, the Contractor must immediately submit to the cognizant security office written notification of any changes in the extent and nature of FOCI information it submitted that could affect its answers to the questions in Standard Form 328. Notice of changes in FOCI information that are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice must also be reported concurrently to the cognizant security office.

(b) *Definitions.*

(1) *Foreign Interest* means any of the following—

(i) A foreign government, foreign government agency, or representative of a foreign government;

(ii) Any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and

(iii) Any person who is not a citizen or national of the United States.

(2) *Foreign Ownership, Control, or Influence (FOCI)* means the situation where the degree of ownership, control, or influence over a Contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.

(c) *Facility Clearance* means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being performed at the facility. It is DOE policy that all Contractors or Subcontractors requiring access authorizations be processed for a Facility Clearance at the level appropriate to the activities being performed under the contract. Approval for a Facility Clearance shall be based upon—

(1) A favorable foreign ownership, control, or influence (FOCI) determination based upon the Contractor's response to the ten questions in Standard Form 328 and any required, supporting data provided by the Contractor;

(2) A contract or proposed contract containing the appropriate security clauses;

(3) Approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;

(4) An established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System if access to nuclear materials is involved;

(5) A survey conducted no more than 6 months before the Facility Clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;

(6) Appointment of a Facility Security Officer, who must possess or be in the process of obtaining an access authorization equivalent to the Facility Clearance; and, if applicable, appointment of a Materials Control and Accountability Representative; and

(7) Access authorizations for key management personnel who will be determined on a case-by-case basis, and who possess or are in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.

(d) *Facility Clearance and Employees Requiring Access Authorizations Prior to DOE's Granting Facility Clearance.*

(1) A Facility Clearance is required for this contract, although not necessarily prior to contract award. A favorable FOCI determination for this contract is required prior to contract award. It must be rendered by the responsible cognizant security office. The Contracting Officer may require the offeror to submit additional information as deemed pertinent to this determination.

(i) The DOE must determine that awarding this contract to the offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or special nuclear material in the performance of the contract. The Contracting Officer may require the offeror to submit such additional information as deemed pertinent to this determination.

(ii) Before contract award, after obtaining a favorable FOCI determination, the successful offeror/Contractor may be eligible to obtain a Facility Clearance.

(iii) If the successful offeror/Contractor does not obtain a Facility Clearance before contract award, after contract award the Contractor shall submit the necessary information to obtain a Facility Clearance and to obtain personnel Interim Access Authorizations in accordance with Departmental policies and procedures.

(2) The DOE may grant certain of the Contractor's Key Management Personnel and the Contractor's Facility Security Officer Interim Access Authorization. If granted Interim Access Authorization, the Contractor's Key Management Personnel and the Contractor's Facility Security Officer will have access to classified information or special nuclear material.

(e) A Facility Clearance is required even for contracts that do not require the Contractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but that require DOE access authorizations for the Contractor's employees to

perform work at a DOE location. This type of facility is identified as a non-possessing facility.

(f) Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders (or vendors for purchase orders) requiring access authorizations for access to classified information or special nuclear material. Subcontractors shall be directed to provide responses to the questions in Standard Form 328, Certificate Pertaining to Foreign Interests, directly to the prime Contractor or the Contracting Officer for the prime contract.

Notice to Offerors—Contents Review (Please Review Before Submitting)

Prior to submitting the Standard Form 328, required by paragraph (a)(1) of this clause, the offeror should review the FOCI submission to ensure that:

(1) The Standard Form 328 has been signed and dated by an authorized official of the offeror;

(2) If publicly owned, the Contractor's most recent annual report, and its most recent proxy statement for its annual meeting of stockholders; or, if privately owned, the audited, consolidated financial information for the most recently closed accounting year has been attached;

(3) A copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents are provided;

(4) A list identifying the organization's owners, officers, directors, and executive personnel, including their names, social security numbers, citizenship, titles of all positions they hold within the organization, and what clearances, if any, they possess or are in the process of obtaining, and identification of the government agency(ies) that granted or will be granting those clearances; and

(5) A summary FOCI data sheet is provided.

Note: A FOCI submission must be attached for each tier parent organization (*i.e.,* ultimate parent and any intervening levels of ownership). If any of these documents are missing, award of the contract cannot be completed.

(End of provision)

952.204-74 Counterintelligence.

As prescribed in 904.404(d)(7), insert the following clause:

Counterintelligence [December 2024]

(a) The Contractor shall take all reasonable precautions in performing the work under this contract to protect Department of Energy (DOE) programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with the current version of DOE Order 475.1, Counterintelligence Program; E.O. 12333 of December 4, 1981, U.S. Intelligence Activities; and other applicable national and DOE counterintelligence requirements.

(b) The Contractor shall appoint qualified employees to function as contractor counterintelligence

officers. A contractor counterintelligence officer is responsible for conducting defensive counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of counterintelligence interest; immediately reporting targeting, suspicious activity and other counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in E.O. 12333, DOE Order 475.1, and other applicable national and DOE counterintelligence requirements.

(End of clause)

952.204-75 Public affairs.

As prescribed in 904.7201, insert the following clause:

Public Affairs (DEC 2000)

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

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

(c) The Contractor's internal procedures must ensure that all releases of information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Contractor's organization.

(d) The Contractor must comply with DOE procedures for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.

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

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

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

(End of clause)

952.204-77 Computer security.

As prescribed in 904.404(d)(6), insert the following clause:

Computer Security (AUG 2006)

(a) *Definitions.*

(1) *Computer* means desktop computers, portable computers, computer networks (including the DOE Network and local area networks at or controlled by DOE organizations), network devices, automated information systems, and or other related computer equipment owned by, leased, or operated on behalf of the DOE.

(2) *Individual* means a DOE Contractor or subcontractor employee, or any other person who has been granted access to a DOE computer or to information on a DOE computer, and does not include a member of the public who sends an e-mail message to a DOE computer or who obtains information available to the public on DOE Web sites.

(b) *Access to DOE computers.* A Contractor shall not allow an individual to have access to information on a DOE computer unless—

(1) The individual has acknowledged in writing that the individual has no expectation of privacy in the use of a DOE computer; and

(2) The individual has consented in writing to permit access by an authorized investigative agency to any DOE computer used during the period of that individual's access to information on a DOE computer, and for a period of three years thereafter.

(c) *No expectation of privacy.* Notwithstanding any other provision of law (including any provision of law enacted by the Electronic Communications Privacy Act of 1986), no individual using a DOE computer shall have any expectation of privacy in the use of that computer.

(d) *Written records.* The Contractor is responsible for maintaining written records for itself and subcontractors demonstrating compliance with the provisions of paragraph (b) of this section. The Contractor agrees to provide access to these records to the DOE, or its authorized agents, upon request.

(e) *Subcontracts.* The Contractor shall insert this clause, including this paragraph (e), in subcontracts under this contract that may provide access to computers owned, leased or operated on behalf of the DOE.

(End of clause)

952.204-78 DOE Directives.

As prescribed in 904.7301, insert the following clause:

DOE Directives [December 2024]

(a) In performing work under this contract, the Contractor shall comply with the requirements of Department of Energy Directives, or parts thereof, identified in the List of Applicable Directives appended to this contract, identified in the Statement of Work or identified in a special clause within this contract. The Contracting Officer may revise the list of applicable Directives by bilateral modification to the contract. Prior to the modification, the Contracting Officer shall notify the Contractor in writing of DOE's intent and provide the contractor with the opportunity to: assess the impact on cost, funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days of being notified, the Contractor shall advise the Contracting Officer in writing of the potential impact of the modification. The Contracting Officer and Contractor shall decide whether or not to proceed with the modification. Before executing the modification, they must agree to any appropriate changes to other contract terms and conditions, including cost and schedule, pursuant to the clause of this contract entitled “Changes.”

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

(End of clause)

952.208 Clauses related to required sources of supply.

952.208-7 Tagging of leased vehicles.

As prescribed in 908.1104, insert the following clause when leasing commercial vehicles for periods in excess of 60 days:

Tagging of Leased Vehicles (APR 1984)

(a) DOE intends to use U.S. Government license tags.

(b) While it is the intention that vehicles leased hereunder shall operate on Federal tags, the DOE reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the Contractor shall furnish the DOE the documentation required by the State to acquire such tags.

(End of clause)

952.208-70 Printing.

As prescribed in 908.802, insert the following clause:

Printing (APR 1984)

The Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies

of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8 1/2 by 11 inches one side only, one color. A requirement is defined as a single publication document.

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

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

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

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

(End of clause)

952.209 Clauses related to contractor's qualifications.

952.209-8 Organizational conflicts of interest-disclosure.

As prescribed in 909.507-1(e), insert the following provision:

Organizational Conflicts of Interest Disclosure-Advisory and Assistance Services (JUN 1997)

(a) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An offeror notified that it is the apparent successful offeror shall provide the statement described in paragraph (c) of this provision. For purposes of this provision, “apparent successful offeror” means the proposer selected for final negotiations or, where individual contracts are negotiated with all firms in the competitive range, it means all such firms.

(c) The statement must contain the following:

(1) A statement of any past (within the past twelve months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work. For contractual interests, such statement must include the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable. For

financial interests, the statement must include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests enough such information must be provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work.

(2) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated as part of the statement required by (b) of this provision.

(d) Failure of the offeror to provide the required statement may result in the offeror being determined ineligible for award. Misrepresentation or failure to report any fact may result in the assessment of penalties associated with false statements or such other provisions provided for by law or regulation.

(End of provision)

952.209-71 [Reserved]

952.209-72 Organizational conflicts of interest.

As prescribed at 909.507-2, insert the following clause:

Organizational Conflicts of Interest (AUG 2009)

(a) *Purpose.* The purpose of this clause is to ensure that the Contractor

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

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

(1) *Use of contractor's work product.*

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

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

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

(2) *Access to and use of information.*

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

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

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

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

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

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

(iii) The Contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i)

(A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) *Disclosure after award.*

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

(2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such

conflict of interest to the Contracting Officer, DOE may terminate this contract for default.

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

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

(End of clause)

Alternate I: In accordance with 909.507-2 and 970.0905, include the following alternate in the specified types of contracts.

(f) *Subcontracts.*

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

(2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the Contractor shall obtain from the proposed subcontractor or consultant the disclosure required by 48 CFR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor. If the conflict cannot be avoided or neutralized, the Contractor must obtain the approval of the DOE Contracting Officer prior to entering into the subcontract.

(End of alternate)

952.211 Clauses related to contract delivery or performance.

952.211-70 Priorities and allocations for energy programs (solicitations):

As prescribed in 911.604(a), insert the following provision in solicitations that will result in the award of a contract in support of DOE atomic energy programs:

Priorities and Allocations (Atomic Energy) (APR 2008)

Contracts or purchase orders awarded as a result of this solicitation shall be assigned a [ ] DO-Rating; [ ] DX Rating; and certified for national defense use in accordance with the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700) (Contracting Officer check appropriate box.)

(End of provision)

952.211-71 Priorities and allocations for energy programs (contracts).

As prescribed in 911.604(b), insert the following clause in contracts and purchase orders that are placed in support of authorized DOE atomic energy programs pursuant to the Atomic Energy Act of 1954, as amended:

Priorities and Allocations (Atomic Energy) (APR 2008)

The Contractor shall follow the provisions of Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700) in obtaining materials (including equipment), services, or facilities needed to fill this contract.

(End of clause)

952.211-72-952.211-73 [Reserved]

952.215-70 Key personnel.

As prescribed in 915.408-70, the contracting officer shall insert the following clause:

Key Personnel [December 2024]

(a) The personnel listed below or elsewhere in this contract [Insert cross-reference, if applicable] are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must:

(1) Notify the Contracting Officer reasonably in advance and submit justification including resumes for any proposed substitutions; and

(2) Obtain the Contracting Officer's written approval. Notwithstanding the foregoing, the Contractor may immediately remove or suspend any key person if necessary to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, although the Contractor must notify Contracting Officer prior to or concurrently with such action.

(b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel. The Contractor must provide written notice to the cognizant security office if changes to the list of personnel affect key personnel connected to a facility clearance.

[*Insert List of Key Personnel by position/title, reflecting the actual position title of the top-level key personnel, such as Program Manager, Laboratory Director, Project Manager, etc. unless listed elsewhere in the contract*]

(End of clause)

952.216 Clauses related to types of contracts.

952.216-7 Allowable cost and payment.

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

952.217-70 Acquisition of real property.

Insert the following clause when required by 917.7403:

Acquisition of Real Property (MAR 2011)

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

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

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

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

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

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

(End of clause)

952.219-70 DOE Mentor-Protege program.

In accordance with 919.7014 insert the following provision in applicable solicitations.

DOE Mentor-Protege Program (MAY 2000)

The Department of Energy has established a Mentor-Protege Program to encourage its prime contractors to assist firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. If the contract resulting from this solicitation is awarded on a cost-plus-award fee basis, the

Contractor's performance as a Mentor may be evaluated as part of the award fee plan. Mentor and Protege firms will develop and submit “lessons learned” evaluations to DOE at the conclusion of the contract. Any DOE contractor that is interested in becoming a Mentor should refer to the applicable regulations at 48 CFR 919.70 and should contact the Department of Energy's Office of Small and Disadvantaged Business Utilization.

952.223 Clauses related to environment, energy and water efficiency, renewable energy technologies, occupational safety, and drug-free workplace.

952.223-71 Integration of environment, safety, and health into work planning and execution.

As prescribed in 923.7003, insert the following clause:

Integration of Environment, Safety, and Health Into Work Planning and Execution [December 2024]

(a) *Definitions.* “Employees” means both contractor and subcontractor employees.

“Safety” encompasses environment, safety and health, including pollution prevention and waste minimization.

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

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Contractor and subcontractor employees who manage or supervise employees.

(2) Clear lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established that, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

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

to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.

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

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

(1) Define the scope of work;

(2) Identify and analyze hazards associated with the work;

(3) Develop and implement hazard controls;

(4) Perform work within controls; and

(5) Provide feedback on adequacy of controls and continue to improve safety management.

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

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

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

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

work stoppage ordered in accordance with this clause.

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

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

(End of clause)

952.223-72 Radiation protection and nuclear criticality.

As prescribed in 923.7003 the clause set forth herein shall be included in those contracts or subcontracts for, and be made applicable to, work to be performed at a facility where DOE does not elect to assert its statutory authority to enforce occupational safety and health standards applicable to the working conditions of contractor and subcontractor employees, but does need to enforce radiological safety and health standards pursuant to provisions of the contract or subcontract rather than by reliance upon Nuclear Regulatory Commission licensing requirements (including agreements with states under section 274 of the Atomic Energy Act):

Radiation Protection and Nuclear Criticality (APR 1984)

The Contractor shall take all reasonable precautions in the performance of work under this contract to protect the safety and health of employees and of members of the public against the hazards of ionizing radiation and radioactive materials and shall comply with all applicable radiation protection and nuclear criticality safety standards and requirements (including reporting requirements) of DOE. The Contractor shall submit a management program and implementation plan to the Contracting Officer for review and approval within 30 days after the effective date of this contract or modification. In the event that the Contractor fails to comply with said standards and requirements of DOE, the Contracting Officer may, without prejudice to any other legal or contractual rights of DOE, 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 the Contracting Officer. The Contractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

(End of clause)

952.223-73-952.223-74 [Reserved]

952.223-75 Preservation of individual occupational radiation exposure records.

As prescribed at 923.7003(g), insert the clause in contracts containing 952.223-71, Integration of environment, safety, and health into work planning and execution, or 952.223-72, Radiation protection and nuclear criticality:

Preservation of Individual Occupational Radiation Exposure Records (APR 1984)

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

(End of clause)

952.223-78 Sustainable acquisition program.

As prescribed in 923.172, insert the following clause:

Sustainable Acquisition Program [December 2024]

(a) Pursuant to DOE policy, as specified in 48 CFR 923.170, the Contractor shall maintain a sustainable acquisition program that ensures procurement of environmentally preferable products and services as required of DOE by statute, regulation and Executive order. This program shall apply to all products and services acquired in performance of this contract, including first-tier subcontracts, which have reasonable opportunities for environmentally preferable purchasing, consistent with the requirements specified above.

(b) The Contractor shall coordinate its sustainable acquisition activities and submit any required annual reports at the end of the Government fiscal year, through their Sustainability Coordinator (or equivalent), or as otherwise directed by the Contracting Officer. Reporting under this paragraph is only required if the contract offers subcontracting opportunities exceeding the simplified acquisition threshold in any contract year.

(c) *Subcontracts.* These provisions shall be flowed down only to first-tier subcontracts exceeding the simplified acquisition threshold that support operation of the DOE facility and offer significant subcontracting opportunities for energy-efficient or environmentally sustainable products or services. When this clause is included in a subcontract, the word “Contractor” will be understood to mean “Subcontractor.”

(End of clause)

952.225-70 Subcontracting for nuclear hot cell services.

As prescribed in 925.7004, insert the following clause in solicitations and contracts:

Subcontracting for Nuclear Hot Cell Services (MAR 1993)

(a) *Definitions. Costs related to the decommissioning of nuclear facilities,* as used in this clause, means any cost associated with the compliance with regulatory requirements governing the decommissioning of nuclear facilities licensed by the Nuclear Regulatory Commission. Such costs for

foreign facilities and for Department of Energy facilities are costs of decommissioning associated with the compliance with foreign regulatory requirements or the Department's own requirements.

Costs related to the storage and disposal of nuclear waste, as used in this clause, means any costs, whether required by regulation or incurred as a matter of prudent business practice, associated with the storage or disposal of nuclear waste.

Foreign company, as used in this clause, means a company which offers to perform nuclear hot cell services at a facility which is not subject to the laws and regulations of the United States, its agencies, and its political subdivisions.

Nuclear hot cell services, as used in this clause, means services related to the examination of, or performance of various operations on, nuclear fuel rods, control assemblies, or other components that are emitting large quantities of ionizing radiation, after discharge from nuclear reactors, which are performed in specialized facilities located away from commercial nuclear power plants, generally referred to in the industry as “hot cells.”

Nuclear waste, as used in this clause, means any radioactive waste material subject to regulation by the Nuclear Regulatory Commission or the Department of Energy, or in the case of foreign offers, by comparable foreign organizations.

United States company, as used in this clause, means a company which offers to perform nuclear hot cell services at a facility subject to the laws and regulations of the United States, its agencies, and its political subdivisions.

(b) In selecting a competitive offer for a first-tier subcontract acquisition of nuclear hot cell services, the Contractor shall—

(1) Consider neither costs related to the decommissioning of nuclear waste facilities nor costs related to the storage and disposal of nuclear waste; or

(2) Add these costs to offers of foreign companies, if—

(i) One or more of the offers is submitted by a United States company and includes costs related to the decommissioning of nuclear facilities and costs related to the storage and disposal of nuclear waste because it is subject to such cost; and

(ii) One or more of the offers is submitted by a foreign company and does not include these types of costs. (A foreign company might not be subject to such costs or might not have to include these types of cost in its offer if the firm is subsidized in decommissioning activity or storage and disposal of nuclear waste, or a foreign government is performing the activities below the actual cost of the activity.)

(c) Upon determining that no offer from a foreign firm has a reasonable chance of being selected for award, the requirements of this clause will not apply.

(End of clause)

952.225-71 Compliance with export control laws and regulations (Export Clause)

As prescribed in 925.7102, use the following clause:

Compliance With Export Control Laws and Regulations (NOV 2015)

(a) The Contractor shall comply with all applicable export control laws and regulations.

(b) The Contractor's responsibility to comply with all applicable export control laws and regulations exists independent of, and is not established or limited by, the information provided by this clause.

(c) Nothing in the terms of this contract adds to, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive Orders, and regulations, including but not limited to—

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

(2) The Arms Export Control Act (22 U.S.C. 2751 *et seq.*);

(3) The Export Administration Act of 1979 (50 U.S.C. app. 2401 *et seq.*), as continued under the International Emergency Economic Powers Act (Title II of Pub. L. 95-223, 91 Stat. 1626, October 28, 1977; 50 U.S.C. 1701 *et seq.*);

(4) Trading with the Enemy Act (50 U.S.C. App. 5(b), as amended by the Foreign Assistance Act of 1961);

(5) Assistance to Foreign Atomic Energy Activities (10 CFR part 810);

(6) Export and Import of Nuclear Equipment and Material (10 CFR part 110);

(7) International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130);

(8) Export Administration Regulations (EAR) (15 CFR Parts 730 through 774); and

(9) The regulations administered by the Office of Foreign Assets Control of the Department of the Treasury (31 CFR parts 500 through 598).

(d) In addition to the Federal laws and regulations cited above, National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical, and Engineering Information, establishes a national policy that, to the maximum extent possible, the products of fundamental research shall remain unrestricted. NSDD 189 provides that no restrictions may be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided in applicable U.S. statutes. As a result, contracts confined to the performance of unclassified fundamental research generally do not involve any export-controlled activities.

NSDD 189 does not take precedence over statutes. NSDD 189 does not exempt any research from statutes that apply to export controls such as the Atomic Energy Act, as amended; the Arms Export Control Act; the Export Administration Act of 1979, as amended; or the U.S. International Emergency Economic Powers Act, or regulations that implement parts of those statutes (*e.g.,* the ITAR, the EAR, 10 CFR part 110 and 10 CFR part 810). Thus, if items (*e.g.,* commodities, software or technologies) that are controlled by U.S. export control laws or regulations are used to conduct research or are generated as part of the research efforts, export control laws and regulations apply to the controlled items.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all solicitations and subcontracts.

952.226-70 Subcontracting goals under section 3021(a) of the Energy Policy Act of 1992.

As prescribed in 926.7008(b)(1), insert the following provision:

Subcontracting Goals Under Section 3021(A) of the Energy Policy Act of 1992 (Pub. L. 102-486) [December 2024]

(a) *Definition.* Energy Policy Act (EPAct 1992) target groups, as used in this provision, has the meaning conveyed in 48 CFR 926.7002.

(b) Section 3021 of the EPAct 1992 establishes a goal of award of 10 percent of the contract dollar value for prime and subcontract EPAct 1992 awards to EPAct 1992 target groups.

(c) The Offeror, if other than one of the three groups specified in paragraph (a) of this clause, shall submit, as part of its business management proposal or, if this solicitation requires the submission of a Small Business Subcontracting Plan, then as part of that plan, unless otherwise stated in the proposal preparation instructions, individual subcontracting goals for each of the EPAct 1992 target groups. Individual goals shall be expressed in terms of a percentage of the Offeror's proposed contract dollar value. In addition, the Offeror shall provide a description of the nature of the effort to be performed by each of the three groups, and, if possible, the identity of the contemplated subcontractor(s).

(d) Unless otherwise stated, such goals shall be considered in the evaluation of the Business Management Proposal as discussed in Section M of this solicitation or, if applicable, as part of the evaluation of the Small Business Subcontracting Plan.

(End of provision)

952.226-71 Utilization of Energy Policy Act target entities.

As prescribed in 926.7008(b)(2), insert the following clause:

Utilization of Energy Policy Act 1992 Target Entities [December 2024]

(a) *Definition.* Energy Policy Act (EPAct 1992) target groups, as used in this clause, has the meaning conveyed in 48 CFR 926.7002.

(b) *Obligation.* In addition to its obligations under the clause of this contract entitled Utilization of Small Business Concerns (48 CFR 52.219-8), the contractor, in performance of this contract, agrees to provide its best efforts to competitively award subcontracts to entities from among the EPAct 1992 target groups.

(End of clause)

952.226-72 Energy Policy Act subcontracting goals and reporting requirements.

As prescribed in 926.7008(c), insert the following clause:

Energy Policy Act 1992 Subcontracting Goals and Reporting Requirements [December 2024]

(a) *Definition.* Energy Policy Act (EPAct 1992) target groups, as used in this clause, has the meaning conveyed in 48 CFR 926.7002.

(b) *Goals*. The Contractor, in performance of this contract, agrees to provide its best efforts to award subcontracts to the following classes of entities—

(1) Small business concerns controlled by socially and economically disadvantaged individuals or by women: * * * percent;

(2) Historically Black colleges and universities: * * * percent;

(3) Colleges or universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans: * * * percent;

(4) Qualified HUBZone small business concerns: * * * percent.

[* * * These goals are stated in a percentage reflecting the relationship of estimated award value of subcontracts to the value of this contract and appear elsewhere in this contract.]

(c) *Reporting requirements.*

(1) The Contractor agrees to report, on an annual Federal Government fiscal year basis, its progress against the goals by providing the actual annual dollar value of subcontract payments for the preceding 12-month period, and the relationship of those payments to the incurred contract costs for the same period. Reports submitted pursuant to this clause must be received by the Contracting Officer (or designee) not later than 45 days after the end of the reporting period.

(2) If the contract includes reporting requirements under 48 CFR 52.219-9, Small Business Subcontracting Plan, the Contractor's progress against the goals stated in paragraph (b) of this clause shall be included as an addendum to the Individual Subcontract Report and/or the Summary Subcontract Report using the Electronic Subcontracting Reporting System (available at *https://www.esrs.gov/*) for the period that corresponds to the end of the Federal Government fiscal year.

(End of clause)

952.226-73 Energy Policy Act target group representation.

As prescribed in 926.7008(a)(1), insert the following provision:

Energy Policy Act of 1992 Target Group Representation (DEC 2024)

(a) The Offeror is:

(1) ___ An institution of higher education that meets the requirements of 34 CFR 600.4(a), and has a student enrollment that consists of at least 20 percent—

(i) Hispanic Americans, *i.e.,* students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof; or

(ii) Native Americans, *i.e.,* American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) ___ An institution of higher learning determined to be a Historically Black College and University by the Secretary of Education pursuant to 34 CFR 608.2; or

(3) ___ A small business concern, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that is owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women; or

(4) Qualified HUBZone small business concerns, as defined at 48 CFR 2.101.

(b) By submission of an offer, the Offeror agrees to provide to the Contracting Officer, upon request, evidence satisfactory to the Contracting Officer that the Offeror is an entity from the Energy Policy Act target group identified.

(End of provision)

952.226-74 Workforce restructuring and displaced employee hiring preference.

As prescribed in 926.7104, insert the following clause.

Workforce Restructuring and Displaced Employee Hiring Preference (DEC 2024)

(a) *Definition. Eligible employee* means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility

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

(b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the Contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.

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

952.227 Provisions and clauses related to patents, technical data and copyrights.

952.227-9 Refund of royalties.

As prescribed in 927.202-5, insert the following clause:

Refund of Royalties (DEC 2024)

(a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.

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

(c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons. For contracts greater than five years in duration, the contractor shall furnish the statement to the Contracting Officer every five years.

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

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

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

(End of clause)

952.227-11 Patent rights—retention by the contractor.

Alternate I [December 2024] As prescribed at 970.2703-2(a), insert the most recent Standard Patent Rights clause at 37 CFR 401.14 with the following modifications:

Replace the heading (“Standard Patent Rights”) with “37 CFR 401.14 Standard Patent Rights with Alternate I of 48 CFR 952.227-11 Patent rights—retention by the contractor”.

Replace paragraphs (g)(1) and (2) with the following:

(g) Subcontracts

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

(2) The contractor will include in all other subawards, regardless of tier, for experimental developmental or research work the patent rights clause directed by the Contracting Officer.

Replace paragraph (l), Communications, with the following:

(l) Communication

Unless otherwise directed by DOE Patent Counsel, all reports and notifications required by this clause shall be submitted via the iEdison invention management system.

(End of alternate)

Alternate II [December 2024] As prescribed at 970.2703-2(a), insert the most recent Standard Patent Rights clause at 37 CFR 401.14 with the following modifications when the Determination of Exceptional Circumstances (DEC) under 35 U.S.C. 202(a) applies:

Replace the heading (“Standard Patent Rights”) with “37 CFR 401.14 Standard Patent Rights with Alternate II of 48 CFR 952.227-11 Patent Rights-Retention by the Contractor (DETERMINATION OF EXCEPTIONAL CIRCUMSTANCES)”.

Add the following paragraph:

(d)(3) Upon breach of paragraph (n) of this Patent Rights clause.

Replace paragraphs (g)(1) and (2) with the following:

(g) Subcontracts

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

(2) The contractor will include in all other subawards, regardless of tier, for experimental developmental or research work the patent rights clause directed by the Contracting Officer.

Replace paragraph (l), Communications, with the following:

(l) Communication

Unless otherwise directed by DOE Patent Counsel, all reports and notifications required by this clause shall be submitted via the iEdison invention management system.

Add the following paragraphs (n) and (o):

(n) The Contractor agrees that any products embodying any subject invention or produced through the use of any subject invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of DOE that it is not commercially feasible. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, *e.g.,* alternative binding commitments to provide an overall net benefit to the U.S. economy. The Contractor agrees that it will not license, assign or otherwise transfer any subject invention to any entity, at any tier, unless that entity agrees to these same requirements. In the event that the Contractor or other such entity receiving rights in the Subject Invention undergoes a change in ownership amounting to a controlling interest, the Contractor or other such entity receiving rights shall ensure continual compliance with the requirements of this paragraph (n) and shall inform DOE, in writing, of the change in ownership within six months of the change. The Contractor and any successor assignee will convey to DOE, upon written request from DOE, title to any subject invention, upon a breach of this paragraph (n). The Contractor will include this paragraph (n) in all subawards/contracts, regardless of tier, for experimental, developmental or research work.

(o) The requirements, rights and administration of paragraph (n) are further clarified as follows:

1. Waivers. The Contractor (or any entity subject to paragraph (n)) may request a waiver or modification of paragraph (n). Such waivers or modifications may be granted when DOE determines that (1) the Contractor (or any entity subject to paragraph (n)) has demonstrated, with quantifiable data, that manufacturing in the United States is not commercially feasible and (2) a waiver or modification would best serve the interests of the United States and the general public.

2. Final determination of breach of paragraph (n). If DOE determines the Contractor is in breach of paragraph (n), the Department may issue a final written determination of such breach. If such determination includes a demand for title to the subject inventions under the award, the demand for title will cause an immediate conveyance and assignment of all rights to all subject inventions under the award to the United States Government, including all pending U.S. and foreign patent applications and all U.S. and foreign patents that cover any subject invention, without compensation. Any such final determination shall be signed by the cognizant DOE Contracting Officer with the concurrence of the Assistant General Counsel for Technology Transfer & Intellectual Property. Advanced notice will be provided for comment to the Contractor before any final written determination by DOE is issued.

3. Pursuant to Contractor's agreement in paragraph (n) to not license, assign or otherwise transfer rights to subject inventions at any tier unless the entity agrees to paragraph (n): any such license, assignment, or other transfer of right to any subject invention developed under the award shall contain paragraph (n) suitably modified to properly identify the parties. If a licensee, assignee, or other transferee of rights to any subject invention is finally determined by DOE in writing to be in breach of paragraph (n), the applicable license, assignment or other transfer shall be deemed null and void. Advanced notice will be provided for comment to the non-complying party before any final written determination by DOE is made.

4. For clarity, if the forfeiture of title to any subject invention is due to a breach of paragraph (n), the Contractor shall not be entitled to any compensation, or to a license to the subject invention including the reserved license in paragraph (e)(1), unless DOE grants a license through a separately

agreed upon licensing agreement.

5. Authority. The requirements and administration of paragraph (n) is in accordance with the Determination of Exceptional Circumstances (DEC) under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies executed by DOE on June 7, 2021, or any other applicable DEC. A copy of the DEC is available at *https://www.energy.gov/gc/determination-exceptional-circumstances-decs*. By accepting or acknowledging the award, the Contractor is also acknowledging that it has received a copy of the DEC through the foregoing link. As set forth in 37 CFR 401.4, any nonprofit organization or small business firm as defined by 35 U.S.C. 201 affected by any DEC has the right to appeal the imposition of the DEC within thirty (30) working days from the Contractor's acceptance or acknowledgement of this award.

(End of alternate)

952.227-13 Patent rights—acquisition by the Government.

As prescribed at 927.303(d), insert the following clause:

Patent Rights—Acquisition by the Government (DEC 2024)

(a) *Definitions.*

Invention, as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

Practical application, as used in this clause, 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 being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Subject invention, as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the course of or under this contract.

Patent Counsel, as used in this clause, means the Department of Energy Patent Counsel assisting the procuring activity.

DOE patent waiver regulations, as used in this clause, means the Department of Energy patent waiver regulations in effect on the date of award of this contract. See 10 CFR part 784.

Agency licensing regulations and *applicable agency licensing regulations,* as used in this clause, mean the Department of Energy patent licensing regulations at 10 CFR part 781.

(b) *Allocations of principal rights—*

(1) *Assignment to the Government.* The Contractor 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 Contractor under subparagraph (b)(2) and paragraph (d) of this clause.

(2) *Greater rights determinations.* (i) The Contractor, or an employee-inventor after consultation with the Contractor, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulations. A request for a determination of whether the Contractor or the employee-inventor is entitled to acquire such greater rights must be submitted to the Patent Counsel with a copy to the Contracting Officer at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(ii) Within two (2) months after the filing of a patent application, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and, promptly upon issuance of a patent, provide the patent number and issue date for any subject invention in any country for which the Contractor has been granted title or the right to file and prosecute on behalf of the United States by the Department of Energy.

(iii) Not less than sixty (60) 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.

(iv) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) *Minimum rights acquired by the Government.*

(1) With respect to each subject invention to which the Department of Energy grants the Contractor principal or exclusive rights, the Contractor agrees as follows:

(i) The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(ii) The Contractor agrees that with respect to any subject invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations (10 CFR part 784) to require the Contractor, 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 it determines that—

(A) Such action is necessary because the Contractor 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;

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

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

(D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor 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.

(iii) The Contractor 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 of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor 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 Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(v) The Contractor agrees to provide for the Government's paid-up license pursuant to subparagraph (c)(1)(i) of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subparagraph (c)(1)(ii) of this clause, and for the reporting of utilization information as required by subparagraph (c)(1)(iii) of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention.

(2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Contractor.*

(1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license 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 in 37 CFR part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, 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 Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(4) The Contractor may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the conditions in subparagraphs (d)(4)

(i) through (d)(4)(vii) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.

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

(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 States and domestic municipal governments, unless the Secretary of Energy or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.

(iii) If noted elsewhere in this contract as a condition of the grant of an advance waiver of the Government's title to inventions under this contract, or, if no advance waiver was granted but a waiver of the Government's title to an identified invention is granted pursuant to subparagraph (b)(2) of this clause upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.

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

(v) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph (d)(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 Secretary of Energy 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 Secretary 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 Secretary of Energy 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.

(vi) If the contractor 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 for such period of time as specified by Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof.

(vii) Subject to the license specified in subparagraphs (d) (1), (2), and (3) of this clause, the contractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the contractor or inventor fails to have a patent application filed in a timely manner 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 contractor 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 Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) Unless otherwise directed by DOE Patent Counsel, the Contractor shall disclose each subject invention to DOE through the iEdison invention management system within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to DOE 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 extent known at the time of the disclosure, of the nature, purpose, operation, and 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 DOE, the Contractor shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. The report should also include any request for a greater rights determination in accordance with paragraph

(b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Contractor contends in writing at the time the invention is disclosed that it was not so made.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing all subject inventions during that period, and including a statement that all subject inventions have been disclosed (or that there are not such inventions), and that such disclosure has been made in accordance with the procedures required by paragraph (e)(1) of this clause.

(ii) A final report, within 3 months after completion of the contracted work listing all subject inventions or containing a statement that there were no such inventions, and listing all subcontracts at any tier containing a patent right clause or containing a statement that there were no such subcontracts.

(4) The Contractor 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 Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.

(5) The Contractor agrees, subject to FAR 27.302(j), 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.

(f) *Examination of records relating to inventions.*

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor 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—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by subparagraphs (e) (1) and (4) of this clause;

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to DOE for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment* (This paragraph does not apply to subcontracts).

(1) Any time before final payment under this contract, the Contracting Officer may, in the

Government's interest, 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 the Contracting Officer's opinion, the Contractor fails to—

(i) 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.

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

(iii) Disclose any subject invention pursuant to subparagraph (e)(2) of this clause;

(iv) Deliver acceptable interim reports pursuant to subparagraph (e)(3)(i) of this clause; or

(v) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor 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 before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) of this clause, and acceptable final report pursuant to subparagraph (e)(3)(ii) of this clause, and the Patent Counsel has issued a patent clearance certification to the Contracting Officer.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. 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 the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) *Subcontracts.*

(1) The contractor shall include the clause at 37 CFR 401.14 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE or another exception in 37 CFR 401.3(a). In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the contractor shall include this clause (suitably modified to identify the parties). The contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, DOE, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the

subcontractor and DOE with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The contractor 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 a copy to the contracting officer, promptly upon identification of the inventions.

(i) *Preference United States industry.* Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall 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 will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or 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) *Atomic energy.*

(1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted 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 Contractor will obtain patent agreements to effectuate the provisions of subparagraph (e)(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.

(k) *Publication.* It is recognized that during the course of the work under this contract, the Contractor 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 DOE or the Contractor, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

(l) *Forfeiture of rights in unreported subject inventions.*

(1) The Contractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Contractor fails to report to Patent Counsel within six months after the time the Contractor:

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

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

(2) However, the Contractor shall not forfeit rights in a subject invention if, within the time specified in paragraph (l)(1) of this clause, the Contractor:

(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 decision to Patent Counsel, with a copy to the Contracting Officer; or

(ii) Contending that the invention is not a subject invention, the Contractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer; or

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

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this contract), the Contractor 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 (l) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

(End of clause)

Alternate I [December 2024]. As prescribed in 927.303(d)(5), insert Alternate I under special circumstances to provide for a right to require licensing of third parties to background inventions:

(m) *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 Contractor at any time through the completion of this contract:

(i) Which the contractor, 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 Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.

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

(4) Notwithstanding paragraph (m)(3) of this clause, the contractor shall not be obligated to license any background patent if the Contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

(i) A competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or

(ii) The Contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

(End of alternate)

Alternate II [December 2024]. As prescribed in 927.303(d), the following modifications must be made when the "Department of Energy Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies" applies:

The Contracting Officer shall insert the phrase "or upon a breach of paragraph (n) of this clause" after "fails to disclose the subject invention within the times specified in paragraph (e)(2) of this clause" in the first sentence of paragraph (d)(1).

The Contracting Officer shall insert the following paragraph (n):

(n) *U.S. Competitiveness.* With regard to the license granted in paragraph (d)

(1) of this clause, the Contractor agrees that any products embodying any subject invention or produced through the use of any subject invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of DOE that it is not commercially feasible. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, *e.g.,* alternative binding commitments to provide an overall net benefit to the U.S. economy. The Contractor agrees that it will not license, assign or otherwise transfer any subject invention to any entity, at any tier, unless that entity agrees to these same requirements. Should the Contractor or other such entity receiving rights in the invention(s):

(1) Undergo a change in ownership amounting to a controlling interest, or

(2) Sell, assign, or otherwise transfer title or exclusive rights in the invention(s), then the assignment, license, or other transfer of rights in the subject invention(s) is/are suspended until approved in writing by DOE. The Contractor and any successor assignee will convey to DOE, upon written request from DOE, title to any subject invention, upon a breach of this paragraph. The Contractor will include this paragraph in all subawards/contracts, regardless of tier, for experimental, developmental or research work.

(End of alternate)

952.227-14 Rights in data-general.

Alternate VI [December 2024] As prescribed at 927.409(b)(1)(ix), insert Alternate VI to require the contractor to license data regarded as limited rights data or restricted computer software to the Government and third parties at reasonable royalties upon request by the Department of Energy.

(k) *Contractor licensing.* Except as may be otherwise specified in this contract as data not subject to this paragraph, the contractor agrees that upon written application by DOE, it will grant to the Government and responsible third parties, for purposes of practicing a subject of this contract, a nonexclusive license in any limited rights data or restricted computer software on terms and

conditions reasonable under the circumstances including appropriate provisions for confidentiality; provided, however, the contractor shall not be obliged to license any such data if the contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

(1) Such data are not essential to the manufacture or practice of hardware designed or fabricated, or processes developed, under this contract;

(2) Such data, in the form of results obtained by their use, have a commercially competitive alternate available or readily introducible from one or more other sources;

(3) Such data, in the form of results obtained by their use, are being supplied by the contractor or its licensees in sufficient quantity and at reasonable prices to satisfy market needs, or the contractor or its licensees have taken effective steps or within a reasonable time are expected to take effective steps to so supply such data in the form of results obtained by their use; or

(4) Such data, in the form of results obtained by their use, can be furnished by another firm skilled in the art of manufacturing items or performing processes of the same general type and character necessary to achieve the contract results.

(End of alternate)

Alternate VII [December 2024] As prescribed in 927.409(b)(1), substitute the following for paragraph (b)(2)(i) of the clause at FAR 52.227-14:

(b)(2)(i) Assert copyright in data first produced in the performance of this contract (except Restricted Data in category C-24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology) to the extent provided in paragraph (c)

(1) of this clause.

(End of alternate)

Alternate VIII [December 2024] As prescribed in 927.409(a), substitute the following for paragraph (c)(1)(i) of the clause at FAR 52.227-14:

(c) *Copyright—*

(1) Data first produced in the performance of this contract. (i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the DOE Patent Counsel is required to assert copyright in all other data first produced in the performance of this contract. When such permission is granted, the DOE Patent Counsel shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Contractor, when requested, shall promptly deliver to Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

(End of alternate)

952.227-17 Rights in data-special works.

Alternate I [December 2024] As prescribed at 927.409(b)(1), substitute the following for paragraph (c)(1)(ii) of the clause at FAR 52.227-17:

(c)(1)(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause, the DOE Patent Counsel may direct the Contractor to assign (with or without registration), or obtain the assignment of, the copyright to the Government or its designated assignee.

(End of alternate)

Alternate I [December 2024] As prescribed at 927.409(b)(1), substitute the following for paragraph (c)(1)(ii) of the clause at FAR 52.227-17:

(c)(1)(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause, the DOE Patent Counsel may direct the Contractor to assign (with or without registration), or obtain the assignment of, the copyright to the Government or its designated assignee.

(End of alternate)

952.227-70-952.227-74 [Reserved]

952.227-84 Notice of right to request patent waiver.

As prescribed in 927.409(n), insert this provision:

Right To Request Patent Waiver (DEC 2024)

Offerors have the right to request a waiver of all or any part of the rights of the United States in inventions conceived or first actually reduced to practice in performance of the contract that may be awarded as a result of this solicitation, in advance of or within 30 days after the effective date of contracting. Even where such advance waiver is not requested or the request is denied, the contractor will have a continuing right under the contract to request a waiver of the rights of the United States in identified inventions, i.e., individual inventions conceived or first actually reduced to practice in performance of the contract. Domestic small businesses and domestic nonprofit organizations normally will receive the patent rights clause at 37 CFR 401.14 which permits the contractor to retain title to such inventions, except under contracts for management or operation of a Government-owned research and development facility or under contracts involving exceptional circumstances or intelligence activities. Therefore, small businesses and nonprofit organizations normally need not request a waiver. See the patent rights clause in the draft contract in this solicitation. See DOE's patent waiver regulations at 10 CFR part 784.

(End of provision)

952.231-70 Date of incurrence of cost.

In accordance with 931.205-32, insert the following clause when advance understandings have been negotiated regarding costs incurred prior to the contract effective date:

Date of Incurrence of Cost (APR 1984)

The Contractor shall be entitled to reimbursement for costs incurred in an amount not to exceed $_____ on or after _____ which, if incurred after this contract has been entered into, would have been reimbursable under the provisions of this contract.

(End of clause)

952.231-71 Insurance-litigation and claims.

As prescribed in 931.205-19(f), insert the following clause in applicable non-management and operating contracts:

Insurance—Litigation and Claims (DEC 2024)

(a) The contractor must comply with 10 CFR part 719, contractor Legal Management Requirements, if applicable.

(b)

(1) Except as provided in paragraph (b)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the Contracting Officer.

(2) The contractor may, with the approval of the Contracting Officer, maintain a self-insurance program in accordance with FAR 28.308; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with sureties and insurers approved by the Contracting Officer.

(c) The contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the Contracting Officer.

(d) Except as provided in paragraph (f) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed—

(1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance without regard to the limitation of cost or limitation of funds clause of this contract.

(e) The Government's liability under paragraph (d) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(f)

(1) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities to third parties, including contractor employees, and directly associated costs which may include but are not limited to litigation costs, counsel fees, judgment and settlements—

(i) Which are otherwise unallowable by law or the provisions of this contract, including the cost reimbursement limitations contained in 48 CFR 970.31, as supplemented by 48 CFR part 931;

(ii) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the Contracting Officer; or

(iii) Which were caused by contractor managerial personnel's—

(A) Willful misconduct;

(B) Lack of good faith; or

(C) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

(2) The term “contractor's managerial personnel” is defined in the Property clause in 970.5245-1 in this contract.

(g)

(1) All litigation costs, including counsel fees, judgments and settlements shall be segregated and accounted for by the contractor separately. If the Contracting Officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.

(2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the Contracting Officer.

(3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (f) of this clause is not allowable.

(h) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or non-reimbursable costs incurred in connection with contract performance.

(End of clause)

952.232-7 Electronic submission of invoices/vouchers.

As prescribed at 932.971, insert the following clause:

Electronic Submission of Invoices/Vouchers [December 2024]

Contractors shall submit vouchers electronically through the Oak Ridge Financial Service Center's (ORFSC) Vendor Inquiry Payment Electronic Reporting System (VIPERS). VIPERS allows vendors to submit vouchers, attach supporting documentation and check the payment status of any voucher submitted to the DOE. Instructions concerning contractor enrollment and use of VIPERS can be found at *https://vipers.doe.gov*.

(End of clause)

952.233-2 Service of protest.

As prescribed in 933.106, insert the following provision:

Service of Protest [December 2024]

(c) Another copy of a protest filed with the Government Accountability Office shall be furnished to the following address within the time periods described in paragraph (b) of this clause: U.S. Department of Energy, Assistant General Counsel for Procurement and Financial Assistance (GC-61), 1000 Independence Avenue SW, Washington, DC 20585, or email: *gaobidprotest@hq.doe.gov*.

(d) *Notice of Protest File Availability.*

(1) If a protest of this procurement is filed with the GAO in accordance with 4 CFR part 21, any actual or prospective offeror may request the Department of Energy (DOE) to provide it with reasonable access to the protest file pursuant to 33.104(a)(3)(ii). Such request must be in writing and addressed to the Contracting Officer for this procurement.

(2) Any offeror who submits information or documents to DOE for the purpose of competing in this procurement is hereby notified that information or documents it submits may be included in the protest file that will be available to actual or prospective offerors in accordance with the requirements of 48 CFR 33.104(a)(3)(ii). DOE will be required to make such documents available unless they are exempt from disclosure pursuant to the Freedom of Information Act. Therefore, offerors should mark any documents as to which they would assert that an exemption applies (see 10 CFR part 1004).

(e) *Protests to the Agency.* The DOE's agency protest procedures are in 48 CFR 933.103. Potential protesters should discuss their concerns with the Contracting Officer prior to filing a protest. In the event that an interested party believes a protest is necessary, efforts should be made to resolve the protest at the lowest level possible.

(End of provision)

952.235-71 Research misconduct.

As prescribed in 935.071, insert the following clause:

Research Misconduct (JUL 2005)

(a) The Contractor is responsible for maintaining the integrity of research performed pursuant to this contract award including the prevention, detection, and remediation of research misconduct as defined by this clause, and the conduct of inquiries, investigations, and adjudication of allegations of research misconduct in accordance with the requirements of this clause.

(b) Unless otherwise instructed by the Contracting Officer, the Contractor must conduct an initial inquiry into any allegation of research misconduct. If the Contractor determines that there is sufficient evidence to proceed to an investigation, it must notify the Contracting Officer and, unless otherwise instructed, the Contractor must:

(1) Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies or a determination that no further action is warranted.

(2) If the investigation leads to a finding of research misconduct, conduct an adjudication by a responsible official who was not involved in the inquiry or investigation and is separated organizationally from the element which conducted the investigation. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.

(3) Inform the Contracting Officer if an initial inquiry supports a formal investigation and, if requested by the Contracting Officer thereafter, keep the Contracting Officer informed of the results of the investigation and any subsequent adjudication. When an investigation is complete, the Contractor will forward to the Contracting Officer a copy of the evidentiary record, the investigative report, any recommendations made to the Contractor's adjudicating official, the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response (if any).

(c) The Department of Energy (DOE) may elect to act in lieu of the Contractor in conducting an inquiry or investigation into an allegation of research misconduct if the Contracting Officer finds that—

(1) The research organization is not prepared to handle the allegation in a manner consistent with this clause;

(2) The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;

(3) DOE involvement is necessary to ensure the public heath, safety, and security, or to prevent harm to the public interest; or

(4) The allegation involves possible criminal misconduct.

(d) In conducting the activities under paragraphs (b) and (c) of this clause, the Contractor and the Department, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:

(1) *Safeguards for information and subjects of allegations.* The Contractor shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the Contractor without suffering retribution. Safeguards include: protection against retaliation; fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The Contractor shall also provide the subjects of allegations confidence that their rights are protected and that the mere filing of an allegation of research

misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations against them, a description of the allegation and reasonable access to any evidence submitted to support the allegation or developed in response to an allegation and notice of any findings of research misconduct.

(2) *Objectivity and expertise.* The Contractor shall select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct who have appropriate expertise and have no unresolved conflict of interest. The individual(s) who conducts an adjudication must not be the same individual(s) who conducted the inquiry or investigation, and must be separate organizationally from the element that conducted the inquiry or investigation.

(3) *Timeliness.* The Contractor shall coordinate, inquire, investigate and adjudicate allegations of research misconduct promptly, but thoroughly. Generally, an investigation should be completed within 120 days of initiation, and adjudication should be complete within 60 days of receipt of the record of investigation.

(4) *Confidentiality.* To the extent possible, consistent with fair and thorough processing of allegations of research misconduct and applicable law and regulation, knowledge about the identity of the subjects of allegations and informants should be limited to those with a need to know.

(5) *Remediation and sanction.* If the Contractor finds that research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process. The Contractor must take all necessary corrective actions. Such action may include but are not limited to, correcting the research record and as appropriate imposing restrictions, controls, or other parameters on research in process or to be conducted in the future. The Contractor must coordinate remedial actions with the Contracting Officer. The Contractor must also consider whether personnel sanctions are appropriate. Any such sanction must be considered and effected consistent with any applicable personnel laws, policies, and procedures, and shall take into account the seriousness of the misconduct and its impact, whether it was done knowingly or intentionally, and whether it was an isolated event or pattern of conduct.

(e) DOE reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms and conditions of the award instrument and applicable laws and regulations. However, the Contractor's good faith administration of this clause and the effectiveness of its remedial actions and sanctions shall be positive considerations and shall be taken into account as mitigating factors in assessing the need for such actions. If DOE pursues any such action, it will inform the subject of the action of the outcome and any applicable appeal procedures.

(f) *Definitions.*

Adjudication means a formal review of a record of investigation of alleged research misconduct to determine whether and what corrective actions and sanctions should be taken.

Fabrication means making up data or results and recording or reporting them.

Falsification means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

Finding of Research Misconduct means a determination, based on a preponderance of the evidence, that research misconduct has occurred. Such a finding requires a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.

Inquiry means information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

Investigation means the formal examination and evaluation of the relevant facts.

Plagiarism means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Research means all basic, applied, and demonstration research in all fields of science, medicine, engineering, and mathematics, including, but not limited to, research in economics, education, linguistics, medicine, psychology, social sciences statistics, and research involving human subjects or animals.

Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, but does not include honest error or differences of opinion.

Research record means the record of all data or results that embody the facts resulting from scientists' inquiries, including, but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

(g) By executing this contract, the Contractor provides its assurance that it has established an administrative process for performing an inquiry, mediating if possible, or investigating, and reporting allegations of research misconduct; and that it will comply with its own administrative process and the requirements of 10 CFR part 733 for performing an inquiry, possible mediation, investigation and reporting of research misconduct.

(h) The Contractor must insert or have inserted the substance of this clause, including paragraph (g), in subcontracts at all tiers that involve research.

(End of clause)

952.236 Construction and architect-engineer contracts.

952.236-71 Inspection in architect-engineer contracts.

As prescribed at 936.609-3 insert the following clause:

Inspection (APR 1994)

The Government, through any authorized representatives, has the right at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

(End of clause)

952.236-72 [Reserved]

952.237-70 Collective bargaining agreements—protective services.

As prescribed in 937.7040, insert the following clause:

Collective Bargaining Agreements—Protective Services (AUG 1993)

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations.

For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The Contractor shall include the substance of this clause in any subcontracts for protective services.

(End of clause)

952.242-70 Technical direction.

As prescribed in 942.270-2, insert the following clause:

Technical Direction (DEC 2000)

(a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term “technical direction” is defined to include, without limitation:

(1) Providing direction to the Contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.

(2) Providing written information to the Contractor that assists in interpreting drawings, specifications, or technical portions of the work description.

(3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the Contractor to the Government.

(b) The Contractor will receive a copy of the written COR designation from the Contracting Officer. It will specify the extent of the COR's authority to act on behalf of the Contracting Officer.

(c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that—

(1) Constitutes an assignment of additional work outside the Statement of Work;

(2) Constitutes a change as defined in the contract clause entitled “Changes;”

(3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions or specifications of the contract; or

(5) Interferes with the Contractor's right to perform the terms and conditions of the contract.

(d) All technical direction shall be issued in writing by the COR.

(e) The Contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (c)

(1) through (c)(5) of this clause, the Contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer must—

(1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;

(2) Advise the Contractor in writing within a reasonable time that the Government will issue a written change order; or

(3) Advise the Contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.

(f) A failure of the Contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled “Disputes.”

(End of clause)

952.242-71 Conditional payment of fee, profit, and other incentives.

As prescribed at 923.7003(f) and 942.71(d), insert the following clause: (Note: If the clause at 952.204-2, Security Requirements, is not included in the contract, the security or safeguarding of Restricted Data and other classified information requirements of the clause do not apply; if the clause at 952.250-70, Nuclear Hazards Indemnity Agreement, is not included in this contract, the environment, safety and health requirements of the clause do not apply.)

Conditional Payment of Fee, Profit, and Other Incentives [December 2024]

(a) *Definitions.*

(1) *Amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for a period* means the quantity the Contracting Officer or fee determining official determines the Contractor is due for its performance prior to a separate determination that the Contractor did not comply with a

term or condition of the contract or experienced a failure relating to: environment, safety, and health or security or safeguarding of Restricted Data and other classified information.

(i) If the contract includes incentives allocable to more than one period, the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for a period includes the allocable amount of payment for each such incentive for otherwise earned fee, fixed fee, profit, or other incentives. Unless stated otherwise, the allocable amount is the total amount divided by the number of periods the incentive covered.

(2) *Amount actually payable to the Contractor for a period* means: (the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for the period) less (the amount of any reduction under this clause and the amount of any reductions under other clauses to the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for the period).

(b) *General.*

(1) (*Note:* If the clause at 952.204-2, Security Requirements, is not included in this contract, the security or safeguarding of Restricted Data and other classified information requirements of this clause do not apply; if the clause at 952.250-70, Nuclear Hazards Indemnity Agreement, is not included in this contract, the environment, safety and health requirements of this clause do not apply.)

The amount of payment of otherwise earned fee, fixed fee, profit, or other incentives for any period under this contract is dependent upon the Contractor's and the Contractor's employees' compliance during the period with the performance requirements of this contract relating to:

(i) environment, safety and health (ES&H), which includes worker safety and health (WS&H); and

(ii) security or safeguarding of Restricted Data and other classified information.

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

(3) The security or safeguarding of Restricted Data and other classified information performance requirements of this contract are set forth in the clause of this contract entitled, “Security requirements,” the clause (if it is included) of this contract entitled “Laws, Regulations, and DOE Directives,” and in other terms and conditions.

(4) If the Contractor does not, in any period, meet the performance requirements of this contract relating to ES&H or security or the safeguarding of Restricted Data and other classified information, the Contracting Officer may, per this clause, reduce the amount of payment of otherwise earned fee, fixed fee, profit or other incentives.

(c) *Amount of Reduction.*

(1) If in any period (see paragraph (c)(5) of this clause) the Contractor does not meet the performance requirements of this contract relating to ES&H or security or the safeguarding of Restricted Data and other classified information, the Contracting Officer will unilaterally determine the amount of reduction to the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for the period based on the severity of the performance failure pursuant to the

degrees of failure specified in paragraphs (e) and (f) of this clause. The percent reduction for each performance failure will be: not less than 26% nor more than 100% for a first degree failure; not less than 11% nor more than 26% for a second degree failure; and no more than 11% for a third degree failure.

(2) For a reduction allocable to more than one period, the Government will make the allocation at the end of the period in which it determines the total amount of the reduction. Unless stated otherwise, the allocable amount is the total reduction amount divided by the number of periods the reduction covered.

(3) The Government will reduce the payment of otherwise earned fee, fixed fee, profit, or other incentives as soon as practicable after the end of the period in which the performance failure occurs. If the Government is not aware of the failure when it occurs, it will make the reduction as soon as practical after becoming aware.

(4) In determining the reduction to the amount of payment and the applicability of mitigating factors, the Contracting Officer must consider the Contractor's overall performance in meeting the ES&H or security or safeguarding of Restricted Data and other classified information performance requirements of the contract. Such consideration must include performance against any specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the Contracting Officer must consider mitigating factors that may warrant a reduction below the reduction that would be appropriate absent mitigating factors. Mitigating factors include, but are not limited to, the following (paragraphs (c)(4)(v), (vi), (vii) and (viii) of this clause apply to ES&H only).

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

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

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

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

(v) Contractor's demonstration to the Contracting Officer's satisfaction that the principles of industrial ES&H standards are routinely practiced.

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

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

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

(5) The Contracting Officer will, for purposes of this clause, at the time of contract award or as soon as possible after contract award, allocate the total amount of fee, profit, and other incentives that is available under the contract to equal periods of [insert 6 or 12] months to run sequentially for the term of the contract, including options. The amount to be allocated to each period shall equal: (the average monthly amount available during the term of the contact) multiplied by (the number of

months for each period).

(d) *Reductions to the amount of payments the Contractor has received for earned fee, fixed fee, profit, or other incentives under this and other clauses.*

(1) The amount of the reduction under this clause, in combination with the amount of any reduction under any other clause, shall not exceed the amount of payment for otherwise earned fee, fixed fee, profit, or other incentives for the period.

(2) If at any time during the contract any reductions under this clause or other clauses result in the sum of the amount of payments the Contractor has received for earned fee, fixed fee, profit, or other incentives to exceed the sum of the amounts of actually payable to the Contractor, the Contractor shall immediately return the excess to the Government.

(3) At the end of the contract—

(i) The Government will pay the Contractor the amount by which the sum of amounts actually payable to the Contractor exceeds the sum of the payments the Contractor has received; or

(ii) The Contractor shall return to the Government the amount by which the sum of the payments the Contractor has received exceeds the sum of the amounts actually payable to the Contractor.

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

(1) First Degree: Performance failures that are most adverse to ES&H. They include:

(i) Failure to develop and obtain required DOE approval of an ISMS, if an ISMS is required.

(The Government will perform necessary reviews in a timely manner and not unreasonably withhold approval.)

(ii) Performance failures determined, per applicable ES&H laws, regulations, or DOE directives to have resulted in, or that could reasonably be expected to result in, serious injury or death to a worker.

(iii) Occurrence of any accident or event that meets the criteria of Appendix A of DOE Order 225.1B (or successor Order) and results in a determination to conduct a Federal Accident Investigation Board.

(2) Second Degree: Performance failures that are significantly adverse to ES&H. They include:

(i) Failures to comply with an approved ISMS, if an ISMS is required.

(ii) Failures that have been determined, per applicable ES&H laws, regulations, or DOE directives, to have resulted in, or could reasonably be expected to result in, an actual injury, exposure, or exceedance that occurred or nearly occurred but had minor practical long-term health consequences.

(iii) A breakdown of the Integrated Safety Management System.

(iv) Non-compliance with applicable ES&H laws, regulations, or DOE directives actually resulting in an accident that meets the criteria of Appendix A of DOE Order 225.1B (or successor Order) but not resulting in a determination to conduct a Federal Accident Investigation Board.

(v) Non-compliance with applicable ES&H laws, regulations, or DOE directives that results in a near miss of an accident or event that could have resulted in an adverse effect and a determination to conduct a Federal Accident Investigation Board. (A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, that does not result in an adverse effect.)

(3) Third Degree: Performance failures that have been determined per applicable ES&H laws, regulations, or DOE directives to reflect a lack of focus on improving ES&H. They include:

(i) Non-compliance with applicable ES&H laws, regulations, or DOE directives actually resulting in potential breakdown of the Integrated Safety Management System. The following performance failures or performance failures of similar import will be considered third degree:

(A) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through external (*e.g.,* Federal) oversight and/or reported per DOE Order 231.B (or successor Order) requirements; internal oversight of 10 CFR parts 830, 835, 850, and 851; or DOE Orders 227.1A and 436.1 (or successor Order) requirements.

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

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

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

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

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

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

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

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information

in an SAP, information identified as SCI, or high risk nuclear weapons-related data.

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

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

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

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

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

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

(3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. This category includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions that if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

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

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures that unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

(End of clause)

952.245 Clauses related to government property.

952.245-2 Government property (fixed-price contracts).

Modify FAR 52.245-2 by adding “and the DOE Acquisition Regulation subpart 945.5,” at the end of paragraph (d) of the clause.

952.245-5 Government property (cost-reimbursement, time-and-materials, or labor-hour contracts).

Modify FAR 52.245-1 by adding “and DOE Acquisition Regulation subpart 945.5” at the end of the first sentence in paragraphs (e)(1) and (2) of the clause.

952.247-70 Foreign travel.

As prescribed in 947.7002, insert the following clause:

Foreign Travel (JUN 2010)

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

(End of clause)

952.249 Clauses related to termination.

952.250 Clauses related to indemnification of contractors.

952.250-70 Nuclear hazards indemnity agreement.

Insert the following clause in accordance with 950.7006:

Nuclear Hazards Indemnity Agreement [December 2024]

(a) *Definitions*. Except as otherwise specified within this clause, all definitions set forth in the Atomic Energy Act of 1954, as amended (hereinafter called the Act), shall apply to this clause.

“Extraordinary nuclear occurrence” means an event that DOE has determined to be such an 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.

“Public liability,” referred to below, is public liability as defined in the Act, which (1) arises out of or

in connection with the activities under this contract, including transportation; and (2) arises out of or results from a nuclear incident or precautionary evacuation.

(b) *Authority.* This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. of the Act.

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

(d) *Indemnification.* To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in paragraph (a) of this clause; and (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or $2,000,000,000 in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(e)

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

(2) In the event of an extraordinary nuclear occurrence that—

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

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

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

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

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to negligence, contributory negligence, assumption of risk, or 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 any issue or defense based on any statute of limitations, if suit is instituted within three years of the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The

waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(v) For the purposes of making a determination of whether or not there has been an extraordinary nuclear occurrence, “offsite,” as used in 10 CFR part 840, means “away from the contract location,” a phrase that means any DOE facility, installation, or site at which contractual activity under this contract is being carried out, and any contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.

(3) The waivers set forth in paragraph (e) of this clause—

(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 any injury or damage to a claimant (or claimant's property) that is intentionally sustained by the claimant, or that 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 not within the protection afforded under

(A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) *Notification and litigation of claims*. The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (a) of this clause. Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to:

(1) Require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and

(2) Appear through the Attorney General on behalf of the Contractor or other person indemnified in

any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) *Continuity of DOE obligations.* The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this contract.

(h) *Effect of other clauses.* The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the Disputes clause, provided, however, that this clause is subject to the clauses at 48 CFR 52.203-5, Covenant Against Contingent Fees, and 970.5232-3, Accounts, Records, and Inspection, and any provisions later added to this contract, as required by applicable Federal law, including statutes, Executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

(i) *Civil penalties.* The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to section 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders, and pursuant to section 234C of the Act, for violations of applicable DOE worker safety and health related rules, regulations, and orders. If the Contractor is a not-for-profit contractor, as defined by section 234Ad.(2), the total amount of civil penalties paid shall not exceed the total amount of fees paid within any one-year period (as determined by the Secretary) under this contract.

(j) *Criminal penalties.* Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers indemnified under the provisions of this clause are subject to criminal penalties, pursuant to section 223(c) of the Act, for knowingly and willfully violating the Act, and applicable DOE nuclear safety-related rules, regulations or orders for which violation results in, or if undetected, would have resulted in a nuclear incident.

(k) *Inclusion in Subcontracts.* The Contractor shall insert this clause in any subcontract that may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (a) of this clause. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

Effective date:

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

Relationship to general indemnity

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

(End of clause)

Note I

(1) For contracts with an award date after August 16, 2012, do not include an effective date provision.

(2) For contracts with an award date before August 16, 2012—

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

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

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

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

The indemnity of paragraph (d)(1) of this clause applies to any nuclear incident that occurred on or after August 8, 2005. The Contractor's liability for violations of the Atomic Energy Act of 1954 under this contract is that in effect prior to August 8, 2005.

Note II

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

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

(End of note)

952.250-71-952.250-72 [Reserved]

952.251-70 Contractor employee travel discounts.

As prescribed in 951.7002, insert the following clause:

Contractor Employee Travel Discounts (AUG 2009)

(a) The Contractor shall take advantage of travel discounts offered to Federal Contractor employee travelers by AMTRAK, hotels, motels, or car rental companies, when use of such discounts would

result in lower overall trip costs and the discounted services are reasonably available. Vendors providing these services may require the Contractor employee to furnish them a letter of identification signed by the authorized Contracting Officer.

(b) *Contracted airlines.* Contractors are not eligible for GSA contract city pair fares.

(c) *Discount rail service.* AMTRAK voluntarily offers discounts to Federal travelers on official business and sometimes extends those discounts to Federal contractor employees.

(d) *Hotels/motels.* Many lodging providers extend their discount rates for Federal employees to Federal contractor employees.

(e) *Car rentals.* The Surface Deployment and Distribution Command (SDDC) of the Department of Defense negotiates rate agreements with car rental companies that are available to Federal travelers on official business. Some car rental companies extend those discounts to Federal contractor employees.

(f) *Obtaining travel discounts.*

(1) To determine which vendors offer discounts to Government contractors, the Contractor may review commercial publications such as the Official Airline guides Official Traveler, Innovata, or National Telecommunications. The Contractor may also obtain this information from GSA contract Travel Management Centers or the Department of Defense's Commercial Travel Offices.

(2) The vendor providing the service may require the Government contractor to furnish a letter signed by the Contracting Officer. The following illustrates a standard letter of identification.

OFFICIAL AGENCY LETTERHEAD

TO: Participating Vendor

SUBJECT: OFFICIAL TRAVEL OF GOVERNMENT CONTRACTOR

(FULL NAME OF TRAVELER), the bearer of this letter is an employee of (COMPANY NAME) which has a contract with this agency under Government contract (CONTRACT NUMBER). During the period of the contract (GIVE DATES), AND WITH THE APPROVAL OF THE CONTRACT VENDOR, the employee is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors.

SIGNATURE, Title and telephone number of Contracting Officer

(End of clause)