

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE	PAGE OF PAGES 1 7
2. AMENDMENT/MODIFICATION NO. M175		3. EFFECTIVE DATE 01/05/2008		4. REQUISITION/PURCHASE REQ. NO.	
6. ISSUED BY U.S. Department of Energy Brookhaven Site Office 53 Bell Avenue, Building 464 Upton, NY 11974-5000		7. ADMINISTERED BY (If other than Item 6) Code		5. PROJECT NO. (If applicable)	
8. NAME AND ADDRESS OF CONTRACTOR (No. street, county, State and ZIP Code) Brookhaven Science Associates, LLC 25 Brookhaven Avenue Building 460 Upton, New York 11973-5000				(✓)	9.A. AMENDMENT OF SOLICITATION NO.
					9.B. DATED (SEE ITEM 11)
				X	10.A. MODIFICATION OF Contract/Order NO. DE-AC02-98CH10886
					10.B. DATED (SEE ITEM 13) 01/05/1998
CODE N/A	FACILITY CODE N/A		11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS		

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning ___ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)
N/A

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Secretarial Direction and mutual agreement of the parties.
	D. OTHER (Specify type of modification and authority)

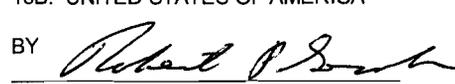
E. IMPORTANT: Contractor is not, is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section heading, including solicitation/contract subject matter where feasible.)

The purpose of this Modification is to extend the contract an additional 12 months, provide for further extensions and establish the fee amount for the remaining term of the contract in accordance with the provisions of Clause H. 40. Accordingly, applicable sections of the contract have been revised.

This modification also revises the contract to incorporate appropriate updates that have occurred since the last modification; this includes the latest guidance promulgated by Acquisition Letter 2007-12.

The details of these revisions are provided on the following pages.

15A. NAME AND TITLE OF SIGNER (Type or print) John Hauser Chief Financial Officer		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Robert P. Gordon Contracting Officer	
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)	15C. DATE SIGNED JAN 4, 2008	16B. UNITED STATES OF AMERICA BY  (Signature of Contracting Officer)	16C. DATE SIGNED JAN 4, 2008

Said contract, as modified previously, is hereby further modified as follows:

1. Part I, Section B.3 – Performance and Other Incentive Fees: The fee schedule is revised to reflect the extension of the contract. Replace the prior version of Section B.3 with the revised language attached herein.

2. Part I, Section C.4 (c) - Administration and Operation of the Laboratory: In accordance with the provisions of Acquisition Letter 2007-12, "Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management", specified language has been added to Section C.4 (c) as item (12) entitled "Facility Operations and Infrastructure". The language is included herein as an attachment.

3. Part I, Section F.1 – Period of Performance: The period of performance is revised to reflect the extension of the contract via modification. Therefore Section F.1 is replaced with the following language:

"This contract shall be effective as specified in Block No. 3 – Effective Date, of Standard Form 30 for this contract modification, except as otherwise provided, and shall continue up to and including January 4, 2009, unless sooner terminated according to its terms or extended in accordance with the appropriate FAR and DEAR provisions. "

4. Part I, Section G.1 – DOE Contracting Officer: In accordance with the most recent Federal Acquisition Regulation (FAR) updates to the definitions clause (FAR 52.202-1), the first sentence of this section is revised to read as follows: "For the definition of Contracting Officer see FAR 2.101--Definitions".

5. Part I, Section H – Contract Clauses, Table of Contents: This section is revised to reflect the deletion of Clause H.13 and the addition of Clauses H.40, H.41 and H.42. Clauses H.4, H.8, H.11, H.21 and H.38 have been revised as indicated in the numbered paragraphs listed below.

6. Clause H.4 – Advance Understandings Regarding Additional Items of Allowable and Unallowable Costs and Other Matters: In Part I (a) delete the FAR reference and replace it with "FAR 31.205-47(f) (7)". In Parts I (c) and (d), delete the references to FAR 31.205-44 (i) and replace it with "FAR 31.205-44 (e)".

7. Clause H.8 - Additional Definitions: In order to comply with Federal Acquisition Regulation (FAR) updates to the definitions clause (FAR 52.202-1), Clause H.8 has been expanded to include definitions (e) through (i) provided herein as an attachment.

8. Clause H.11 – Protection of Human Subjects: In the first sentence, delete everything after "10 CFR 745" and replace it with "and DOE Order 443.1, Protection of Human Subjects, must be complied with".

9. Clause H.13 – Performance Measure Review: This clause is deleted; the number is "Reserved".

10. Clause H.21 – Contractor Compensation, Benefits and Pension: This clause has been revised; replace the prior version with the updated attachment provided herein.

11. Clause H.38 – Electronic Subcontracting Reporting System (AL 2006-01): The title of this clause is corrected to change "SYSYTEM" to "SYSTEM".

12. Clause H.40 - Option to Extend the Term of the Contract: Clause H.40 is hereby added to this contract. The specific language is as follows:

"The Department of Energy, at its sole discretion, has the option to unilaterally extend the term of this contract for up to an additional twelve (12) months. Said option may be exercised in any combination of increments of at least one month in duration and said option may be exercised more than once; however, the sum total of all option exercise(s) shall not exceed twelve (12) months. The initial option exercise shall be made, if at all, not later than January 4, 2009. Any subsequent option exercise(s) shall be made, if at all, not later than the last day of that current contract performance period."

13. Clause H.41 Lobbying Restriction (Energy and Water Act, 2006): Clause H. 41 is hereby added to this contract. The specific language is as follows:

“The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.”

14. Clause H.42 Work Authorization Clause H.42 is hereby added to this contract; the specific language is provided herein as an attachment.

15. Part II, Section I – Contract Clauses, Table of Contents: This section is updated to reflect the addition of Clauses I.14A, I. 28A, I.28B, I.28C, I.29B, I.29C, I.33A, I.36, I.36A, I.44A, I.63A and I.81A. Clauses I.1, I.8, I.9A, I.9B, I.15, I.16, I.35, I.39, I.51, I.54, I.55, I.76, I.77, I.91, I.92 and I.103 have been revised. Clause I.56A has been deleted.

16. Clause I.1 – FAR 52.202-1 Definitions (Jul 2004): This clause has been revised; replace the prior version with the updated attachment provided herein.

17. Clause I.8 – FAR 52.203-12 Limitation on Payments to influence Certain Federal Transactions (Sep 2007): This clause has been revised; replace the prior version with the updated attachment provided herein.

18. Clause I.9A – FAR 52.204-7 Central Contractor Registration (Jul 2006): This clause has been revised; replace the prior version with the updated attachment provided herein.

19. Clause I.9B – FAR 52.204-9 Personal Identity Verification of Contractor Personnel (Sep 2007): This clause has been revised; replace the prior version with the updated attachment provided herein.

20. Clause I.14A – FAR 52.219-4 Notice of Price Evaluation for Hubzone Small Business Concerns (Jul 2005): Clause I.14A is hereby added to this contract; the specific language is provided herein as an attachment.

21. Clause I.15 – FAR 52.219-8 Utilization of Small Business Concerns (May 2004): This clause has been revised; replace the prior version with the updated attachment provided herein.

22. Clause I.16 – FAR 52.219-9 Small Business Subcontracting Plan (Nov 2007): This clause has been revised; replace the prior version with the updated attachment provided herein.

23. Clause I.28A – FAR 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004): Clause I.28A is hereby added to this contract; the specific language is provided herein as an attachment.

24. Clause I.28B – FAR 52.222-50 Combating Trafficking in Persons (Aug 2007): Clause I.28B is hereby added to this contract; the specific language is provided as an attachment.

25. Clause I.28C – FAR 52.223-3 Hazardous Material Identification and Material Safety Data (Jan 1997) (Alt I Jul 1995): Clause I.28.C is hereby added to this contract; the specific language is provided herein as an attachment.

26. Clause I.29B – FAR 52.223-7 Notice of Radioactive Materials (Jan 1997): Clause I.29B is hereby added to this contract; the specific language is provided herein as an attachment.

27. Clause I.29C – FAR 52.223-11 Ozone Depleting Substances (May 2001): Clause I.29C is hereby added to this contract; the specific language is provided herein as an attachment.

- 28. Clause I.33A – FAR 52.225-8 Duty-Free Entry (Feb 2000):** Clause I.33A is hereby added to this contract; the specific language is provided herein as an attachment.
- 29. Clause I.35 – FAR 52.225-13 Restrictions on Certain Foreign Purchases (Feb 2006):** This clause has been revised; replace the prior version with the updated attachment provided herein.
- 30. Clause I.36 – FAR 52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises (Jun 2000):** Clause I.36 is hereby added to this contract; the specific language is provided herein as an attachment.
- 31. Clause I.36A – FAR 52.227-10 Filing of Patent Applications – Classified Subject Matter (Dec 2007):** Clause I.36A is hereby added to this contract; the specific language is provided herein as an attachment.
- 32. Clause I.39 – FAR 52.230-6 Administration of Cost Accounting Standards (Apr 2005):** This clause has been revised; replace the prior version with the updated attachment provided herein.
- 33. Clause I.44A – FAR 52.233-4 Applicable Law for Breach of Contract Claim (Oct 2004):** Clause I.44A is hereby added to this contract; the specific language is provided herein as an attachment.
- 34. Clause I.51 – FAR 52.247-1 Commercial Bill of Lading (Feb 2006):** This clause has been revised; replace the prior version with the updated attachment provided herein.
- 35. Clause I.54 – FAR 52.247-67 Submission of Transportation Documents for Audit (Feb 2006):** This clause has been revised; replace the prior version with the updated attachment provided herein.
- 36. Clause I.55 – FAR 52.249-6 Termination (Cost-Reimbursement) (May 2004); Modified by DEAR 970.4905-1:** This clause has been revised; replace the prior version with the updated attachment provided herein.
- 37. Clause I.56A – FAR 52.250-1 Indemnification Under Public Law 85-804 (APR 1984) (Alternate I) (Apr 1984) (Deviation):** This clause is deleted; the number is “Reserved”.
- 38. Clause I.63A – DEAR 952.204-71 Sensitive Foreign Nations Controls (Apr 1994):** Clause I.63A is hereby added to this contract; the specific language is provided herein as an attachment.
- 39. Clause I.76 – DEAR 970.5203-1 Management Controls (Jun 2007) (Deviation):** This clause has been revised; replace the prior version with the updated attachment provided herein.
- 40. Clause I.77 – DEAR 970.5203-2 Performance Improvement and Collaboration (May 2006):** This clause has been revised; replace the prior version with the updated attachment provided herein.
- 41. Clause I.81A DEAR 52.211-1 Work Authorization (May 2007):** Clause I.81A is hereby added to this contract; the specific language is provided herein as an attachment.
- 42. Clause I.91 – DEAR 970.5227-2 Rights in Data -- Technology Transfer (Deviation-July 2006):** This clause has been revised (per Acquisition Letter 2006-10: “Class Deviation for Certain DEAR Intellectual Property Clauses”); replace the prior version with the updated attachment provided herein.
- 43. Clause I.92 – DEAR 970.5227-3 Technology Transfer Mission (Deviation-July 2006; Alt I):** This clause has been revised (per Acquisition Letter 2006-10: “Class Deviation for Certain DEAR Intellectual Property Clauses”); replace the prior version with the updated attachment provided herein.

44. Clause I.103 – DEAR 970.5232-3 Accounts, Records, and Inspection (Jun 2007): This clause has been revised; replace the prior version with the updated attachment provided herein.

45. Clause I.104 - OBLIGATION OF FUNDS: The first sentence of paragraph (a) is revised to read as follows: "The amount presently obligated by the Government with respect to this Contract is \$4,494,535,568.87."

46. The following is a history of the change in the obligated amount since the last M Modification that updated Clause I.104.

PRIOR OBLIGATION M171	\$ 4,394,918,852.30
INCREASE IN MOD A172	53,403,618.89
INCREASE IN MOD A173	37,051,504.44
INCREASE IN MOD A174	9,161,593.24
CURRENT TOTAL OBLIGATION:	\$4,494,535,568.87

47. Part III, List of Documents, Exhibits and Other Attachments, Section J, Table of Contents:

The Table of Contents is revised to reflect the change to **J.2, Appendix B**, the Performance Evaluation and Measurement Plan for FY 2008, now identified as "FY 2008 Mod M175"; the addition of the FY 2008 Small Business Subcontracting Plan, identified as "FY 2008 Mod M175", to **J.8, Appendix H** and to reflect the revision of **J.12, Appendix L**, the Computation of Fee for 2008, now identified as "FY 2008 Mod M175". This section is revised to reflect the changes to **J.1, Appendix A**, Advance Understandings on Human Resources; the update to **J.3, Appendix C**, Special Financial Institution Account and the update to **J.9, Appendix I**, DOE Directives.

48. Attachment J.1, Appendix A - Paragraph 34(a) is revised to increase the award for patent applications and to add an award for provisional patent applications. The revised paragraph and award schedule are as follows:

"Awards will be made to any Laboratory employee, assigned employee, loaned employee, consultant, or other affiliate or guest of the Laboratory who is an inventor or co-inventor of a subject invention as said term is defined in the Patent Rights Article when a provisional patent application or patent application is filed in the U. S. Patent and Trademark Office covering such invention; provided that the person has executed all documents necessary for filing such provisional patent application or patent application in conformance with existing regulations, procedures and contracts of the Laboratory and the Department. An additional award may, with DOE approval, be awarded to each such inventor or co-inventor when a patent is granted on said patent application by the U.S. Patent and Trademark Office."

"Awards amount schedule:

Applications filed through September 30, 2007 - \$250 for patent application; \$0 for provisional patent application.
Applications filed after September 30, 2007 - \$300 for patent application; \$100 for provisional patent application."

49. Attachment J.2, Appendix B, Performance Evaluation and Measurement Plan (PEMP) – Appendix B has been revised for FY 2008; replace the prior Mod M171 version with the updated version identified as "FY 2008 M175". This revised PEMP incorporates the requirements of AL 2007-12, "Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management" which revised Measure 7.1.3 and Target 7.1.3.1.

50. Attachment J. 3, Appendix C, Special Financial Institution Account – This section has been revised to amend the terms of the agreement in accordance with the extension of the contract.

51. Attachment J.8, Appendix H – Add the Small Business Subcontracting Plan for FY 2008 identified as “FY2008 Mod M175”.

52. Attachment J.9, Appendix I – DOE Directives: The DOE Directives list identified as Modification M171 has been revised; replaced the prior version with the attached Appendix I, identified as Modification M175. The revisions are as follows:

- (a) Order 153.1 – DEPARTMENTAL RADIOLOGICAL EMERGENCY RESPONSE ASSETS – added.
Cancels: DOE Orders 5530.1A, 5530.2, 5530.3, 5530.4, and 5530.5.
(Note: only Directive 5530.3 was included in this contract)
- (b) Order 475.2 – IDENTIFYING CLASSIFIED INFORMATION – added.
- (c) Manual 475.1-1B – MANUAL FOR IDENTIFYING CLASSIFIED INFORMATION – added.
Cancels: Manual 475.1-1A.
- (d) Manual 205.1-1 – INCIDENT PREVENTION, WARNING AND RESPONSE (IPWAR);
Cancelled by DOE Notice 205.17.
- (e) Manual 205.1-2 – CLEARING, SANITIZATION, AND DESTRUCTION OF INFORMATION SYSTEM STORAGE MEDIA, MEMORY DEVICES, AND RELATED HARDWARE – cancelled by DOE Notice 205.17.

In addition, Notice 205.6, Notice 450.7 and Notice 450.14 have been deleted. The requirements of Notice 450.7 and Notice 450.14 have been incorporated in 10 CFR 851.

53. Attachment J.12, Appendix L – The section has been revised to delete the asterisk which denoted the annualized fee amount. Therefore, the prior version of the FY 2008 Computation of Fee is replaced with the version identified as “FY 2008 Mod M175”.

Attachments:

Part I, Section B.3 Performance and other Incentive Fees
 Part I, Section C.4 (c) (12) Facility Operations and Transportation Management
 Part I, Section H, Special Contract Requirements, Table of Contents
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 Clause H.21
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Section J, Attachment J.9, Appendix I - DOE Directives
Section J, Attachment J.12, Appendix L – Computation of Fee 2008

Part I, Section B.3

In fulfillment of Clause I.82, the Parties have agreed that the maximum performance Fees earnable by the Contractor in accordance with the provisions of Appendix B, Performance Evaluation and Measurement Plan, and Appendix L – Computation of Fee, for the performance of the work under this contract commencing October 1, 2003 are as follows:

October 1, 2003 through September 30, 2004 - \$7,000,000.00
October 1, 2004 through September 30, 2005 - \$7,400,000.00
October 1, 2005 through September 30, 2006 - \$7,400,000.00
October 1, 2006 through September 30, 2007 - \$7,400,000.00
October 1, 2007 through September 30, 2008 - \$7,400,000.00
October 1, 2008 through September 30, 2009 - \$7,400,000.00*
October 1, 2009 through January 4, 2010 - \$1,850,000.00*

The foregoing fees shall be subject to adjustment in the event of a significant change (greater than +/-10% or a lesser amount if appropriate) to the budget or work scope.

*Applicable if Clause H.40 (Option to Extend the Term of the Contract) is exercised. Amounts reflected are annualized.

Part I, Section C.4 (c)

- (12) Facility Operations and Infrastructure. The contractor shall assist DOE through direct participation and other support in achieving DOE's energy efficiency goals and objectives in electricity, water, and thermal consumption, conservation, and savings, including goals and objectives contained in Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management. The Contractor shall maintain and update, as appropriate, its Site Plan (as required elsewhere in the contract) to include detailed plans and milestones for achieving site-specific energy efficiency goals and objectives. With respect to this paragraph, the Plan shall consider all potential sources of funds, in the following order: 1) the maximum use of private sector, third party financing applied on a life-cycle cost effective basis, particularly from Energy Savings Performance Contracts and Utility Energy Services Contracts awarded by DOE; and 2) only after third-party financing options are evaluated, in the event that energy efficiency and water conservation improvements cannot be effectively incorporated into a private sector financing arrangement that is in the best interests of the Government, then DOE funding and funding from overhead accounts can be utilized.

PART I

SECTION H

SPECIAL CONTRACT REQUIREMENTS

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CLAUSE H.8 - ADDITIONAL DEFINITIONS

- (e) The term “DOE” means the Department of Energy, “FERC” means the Federal Energy Regulatory Commission and “NNSA” means the National Nuclear Security Administration.
- (f) “CH” means the DOE Office of Science, Chicago Office.
- (g) “Head of Agency” means: (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy and (iv) the Chairman, Federal Energy Regulatory Commission.
- (h) The term “Senior Procurement Executive” means for:
 - Department of Energy– Director, Office of Procurement and Assistance Management, (DOE);
 - National Nuclear Security Administration– Administrator for Nuclear Security, (NNSA);
 - Federal Energy Regulatory Commission – Chairman, FERC.
- (i) The term “non-profit organization” means:
 - (1) a university or other institution of higher education,
 - (2) an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 as amended and exempt from taxation under section 501(a) and the Internal Revenue Code,
 - (3) any nonprofit scientific or educational organization qualified as a nonprofit by the laws of the State of its organization or incorporation, or
 - (4) a combination of qualifying entities organized for a nonprofit purpose (e.g., partnership, joint venture or limited liability company) each member of which meets the requirements of (1), (2), or (3) above.

CLAUSE H.21 - CONTRACTOR COMPENSATION, BENEFITS AND PENSION

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system including a compensation system self-assessment plan consistent with 48 CFR 31.205-6, "Compensation for personal services." The Contractor's compensation system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR 31.205-6 and DEAR 970.3102-05-6, Compensation for Personal Services.

Until DOE has approved the Contractor's compensation system, the Contractor shall submit the following to the Contracting Officer for a determination of cost reimbursement under the contract:

- (a) Any additional Compensation System self-assessment data that may be needed to validate and approve the Compensation System.
- (b) Any proposed major compensation program design changes prior to implementation.
- (c) Annual Compensation Increase Plan (CIP).
- (d) Individual compensation actions, as required in the contract including initial and proposed changes to base salary and or payments under an Executive Incentive Compensation Plan submitted on the Application for Contractor Compensation Approval, DOE F 3220.5.
- (e) Any proposed establishment of an incentive compensation plan.

The Contractor shall provide the Contracting Officer with the following reports:

- (a) Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.
- (b) At the time of contract award and upon any change thereafter, a list of the top five most highly compensated executives and their salaries.
- (c) Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the Department Workforce Information System (WFIS), compensation and benefits module.

- (d) A Self-Assessment of the total compensation program using mutually agreed to compensation system performance measures that include performance targets in the following areas: customer, financial, internal business, and learning and growth.

DOE will conduct periodic appraisals of Contractor performance with respect to compensation system implementation. Such appraisals when approved by the Contracting Officer, will be conducted by either DOE validation of contractor self assessments of compensation system performance, or third party expert review.

(a) Benefit Programs

The Contractor shall implement an employee benefits program that supports at a reasonable cost the effective recruitment and retention of highly skilled workforce at the Department facility. No presumption of allowability will exist when the Contractor implements changes to its existing employee benefits program until the Contracting Officer makes a determination of cost reimbursement for reasonable changes to the program.

- (1) Submit to the Contracting Officer for a determination of cost reimbursement a periodic evaluation of the Contractor's Employee Benefits Program based on two professionally recognized performance measure:
- (i) An Employee Benefits Value Study (ben-val) Measure every two years which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value study does not address post-retirement benefits (PRB) other than pension, the Contractor shall provide separate PRB cost and plan design data comparison with external benchmarks for nationally recognized and Contracting Officer approved survey sources.
 - (ii) An Employee Benefits Cost Survey Comparison (cost survey) Method every year that analyzes the Contractor's employee benefits cost on a per capita basis per full time equivalent employee and as a percent of payroll and compares it with the cost reported by the U.S. Chamber of Commerce (CoC) Annual Employee Benefits Cost Survey or other Contracting Officer approved broad based national survey.
- (2) When net benefit value and/or per capita cost exceed the comparator group by more than 5 percent, submit corrective action plans to

achieve a net benefit value and per capita cost not to exceed the comparator group by more than 5 percent.

- (3) When required by the Contracting Officer, submit an analysis of the specific plan costs that are above the per capita cost range and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range.
- (4) Implement corrective action plans determined to be reimbursable by the Contracting Officer to align employee benefit programs with the target in paragraph (a).
- (5) Annually submit the Report of Contractor Expenditures for Employee Supplemental Compensation.

(b) Retirement Plans

- (1) Employees of the Brookhaven National Laboratory (BNL) may participate in the defined contribution retirement plans as described in items (i) and (ii) below. With respect to the plans, the Contractor and the Department of Energy (DOE) agree as follows:

The DOE will reimburse the Contractor for necessary and reasonable costs involved in implementing, administering, by the Contractor and Service providers and funding these approved retirement plans. Any change in plan benefits and/or costs not required to maintain qualification under Section 401 of the Internal Revenue Code will require Contracting Officer approval. The Contractor will notify the DOE of any change required solely to maintain qualification under Section 401 of the Internal Revenue Code.

Provisions of this section are subject to successful negotiations with the Program's service providers including, but not limited to investment organizations, insurance companies, etc. Further, these provisions will be subject to and superseded by any law or regulation with which they might conflict.

While it is expected that this Plan will continue indefinitely, the BSA Board of Directors reserves the right to modify or discontinue them at any time, provided, however, that such modification or discontinuance shall not be applicable to this contract unless approved by the Department of Energy. Any discontinuance or modification of the Plan shall not affect the benefits accrued by participants prior to the date of discontinuance or modification.

- (i) "Regular Retirement Plan." BSA will provide its eligible employees with a defined contribution type retirement plan, with BSA contributions being made at the participants' election to one or more of the following investment organizations: Teachers Insurance and Annuity Association (TIAA) and the College Retirement Equities Fund (CREF), Fidelity Investment Service Company, and the Vanguard Group.

Effective 1-1-07, employees who were not participating in the plan on December 31, 2006 will be enrolled upon the earlier of (a) attainment of age 21 and the completion of one year of continuous service or (b) the attainment of age 30 and the completion of 6 months of continuous service, and is not a part-time or temporary employee. Employees who work on a part-time, temporary or irregular basis must complete 1000 hours of service each year to be credited with a year of service. Prior service credit for participation shall be given for comparable eligible service with Associated Universities Incorporated (AUI) and for employees who transfer directly to BSA from Research Foundation of State University of New York (RFSUNY), the University of Stony Brook (USB), and Battelle Memorial Institute (BMI).

BSA shall contribute for each participant an amount equal to 10 percent of base pay.

BSA shall make its contributions to TIAA and/or CREF, Fidelity Investments, or Vanguard in such percentages as the participant may elect. The percentages of the combined sum may be changed by the participant on a monthly basis.

Contracts issued by the investment organizations as part of the Retirement Plan shall be issued to the participant. The rights and benefits of each participant shall be those set forth in the contracts.

The contracts of each employee whose employment by BSA is terminated (other than by death) shall remain in force. Participants who terminate employment from BSA are entitled to have the investment organization repurchase their contracts in accordance with the rules and regulations in effect at the time of termination.

Upon retirement, a number of annuity settlements are available to the employee, as described in the various

investment organizations' booklets. In addition, a retirement option of a lump-sum settlement up to the maximum provided by the contract provisions of the various investment organizations is permitted.

- (ii) "Voluntary 401(k) Retirement Plan." Employees may elect to make voluntary contributions to one or more of the 401(k) program options, to the extent permitted by law, in order to supplement the retirement income available to them from Social Security and from the BSA Regular Retirement Plan. Options include: a 401(k) individual accounts with Teachers Insurance Annuity Association (TIAA) and/or the College Retirement Equities Fund (CREF); and/or a 401(k) accounts invested in regulated investment companies (mutual funds). These voluntary retirement income programs, and the manner in which employee funds may be automatically transmitted to them by the Payroll Office, are described below.

Contributions by Salary Reduction. The 409(a) plan allow employees to elect a deferred income tax option rather than, or in addition to, the salary deduction provision. The option allows for the deferral of income tax payments on the employee's contributions until after the elected deferral period. Under this option, each employee may elect to have base salary reduced by an amount that is not more than the maximum permitted by the Internal Revenue Code. At the election of the participant, the amount of the reduction shall be transmitted by BSA, on behalf of the employee, either to a TIAA and/or CREF retirement annuity, and/or to an eligible investment account, in such proportion as the participant may designate.

TIAA and/or CREF retirement annuities may be purchased through the deferred income tax option as well as through the salary deduction program. The 401(k) plan allows employees who elect to make voluntary contributions through payroll deduction to invest such funds in TIAA and/or CREF retirement annuities, in such percentages as the participant may elect, to the maximum percent permitted by the Internal Revenue Code. These 401(k) percentages may be changed by the participant on a monthly basis. Contributions to TIAA/CREF retirement annuities purchased through payroll deduction will be in separate accounts from annuities purchased under the BSA Retirement Plan.

- (2) The Contractor shall submit to the DOE copies of each IRS Form 5500 and accompanying schedules, an annual accounting report and other information concerning the defined contribution plans which the Contracting Officer may require. The annual accounting report shall include a development of aggregate forfeitures and all plan data for individuals generating those forfeitures.

Prior to the adoption of any changes to a pension plan, the Contractor shall submit the information required below, as applicable, to the Contracting Officer for approval or disapproval and a determination as to whether the costs to be incurred are consistent with the Contractor's documented Human Resources total compensation and benefits program and are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.

- (A) For proposed changes to pension plans and pension plan funding, an analysis of the impact of any proposed changes on actuarial accrued liabilities and an analysis of relative benefit value; and,
- (B) The Contractor shall obtain the advance written approval of the Contracting Officer for any non-statutory pension plan changes that may increase costs or liabilities, and any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) and shall provide DOE with an analysis of the impact of special programs on the actuarial accrued liabilities of the pension plan, and on relative benefit value, if applicable.

The Contractor shall not terminate any DOE reimbursed benefit plan without the DOE's approval. It is the intention of the DOE not to entertain any enhancements in these programs after the Contractor announces the intention not to renew the Contract.

Cost reimbursement for PRBs is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service, **not less than 5 years**, under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.

- (c) Post-Contract Responsibilities for Pension and Benefit Plans

- (1) Upon contract termination, the individual employee accounts in the defined contribution plans shall be handled in accordance with the provisions of the Employee Retirement Income Security Act of 1974 (ERISA) as amended, and the accounts will vest in accordance with the applicable vesting schedule. The Contractor shall inform the plan participants of (a) their right to roll these accounts over into a successor contractor's qualified deferred compensation plan, if such a plan exists, and (b) the consequences of failing to do so, and (c) other applicable rights based on regulatory requirements.
- (2) If this contract expires or terminates without a follow-on contract, notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this contract, the following actions shall occur:
 - (i) The Contractor shall continue as plan sponsor of all existing and follow-on pension and welfare benefit plans covering site personnel with responsibility for management and administration of the plans, as directed by DOE, at DOE's sole discretion.
 - (ii) In accordance with DOE-approved Contractor welfare benefit plans, the Contractor shall provide benefit continuation on a funding basis acceptable to DOE.
 - (iii) The DOE, subject to the availability of appropriated funds, will make available to the Contractor in a timely manner sufficient funds so that the Contractor has no out-of-pocket expenditures from corporate funds to cover all liabilities incurred under this Contract, relating to Contracting Officer-approved Retirement Plans.
 - (iv) During the final 12 months of this contract, the Contracting Officer shall provide written direction regarding post-contract responsibilities for pension and welfare benefit plans.
 - (v) Notwithstanding termination for convenience or default, the contract may be extended as appropriate for purposes deemed necessary by the Contracting Officer, including, but not limited to, obligating funds to pay the Contractor for costs incurred for the Contractor's existing and, if applicable, follow-on, site pension and welfare benefit plans. Such costs shall continue to be allowable in accordance with applicable laws and regulations.

- (vi) Pension plan contributions, plan asset management costs, and plan administration costs will continue to be allowable and fully reimbursed under this contract, on a funding basis acceptable to DOE, unless other arrangements have been approved by the Contracting Officer.

(d) Severance pay benefits are not payable to an employee under this contract if the employee:

- i. Resigns (unless approved for voluntary layoff),
- ii. Is offered employment with a successor/replacement Contractor,
- iii. Is offered employment with a parent or affiliated company, or
- iv. Is discharged for cause.

CLAUSE H.42 - WORK AUTHORIZATION

- (a) Work programs shall be developed by the Contractor and approved by DOE in accordance with applicable DOE directives, and shall constitute work to be performed under this Contract during the pertinent periods involved. Such work programs may include program and project performance objectives and milestones. The Contractor shall consult with DOE, as necessary, during the process of developing work programs. Subject to the other provisions of this contract, changes in the agreed work program, not constituting major changes, may be made by the Contractor when it appears to the Contractor, to be in the best interest of the scientific and technical objectives of the agreed work program to do so. It is understood that the nature of the research and development work under this Contract is of a specialized character not readily reducible to production schedules. In view of these circumstances, it is agreed that the research and development work is performed on a best effort basis.
- (b) Due to the critical character of the work from the standpoint of national significance, it is understood by the Parties hereto that very close collaboration will be required between the Contractor and DOE with respect to direction, emphasis, trends and adequacy of the total program.
- (c) (1) The annual work program and budget are principal devices used by DOE in program development, integration, execution, and cost estimating. To make the work program and budget most effective in assuring comprehensive coverage of DOE missions, it is the responsibility of DOE to keep the operators of DOE's laboratories continually advised of DOE's overall program goals, scientific and technological problems, and its current long range objectives. In light of such information, the Contractor will propose possible new objectives and present preliminary work programs in the area of its competence which, from its point of view, will either strengthen the overall DOE program or provide additional support in areas which, in the Contractor's judgment, are being inadequately exploited, or initiate new areas of investigation which appear of potential importance.
- (2) It is the responsibility of DOE to formulate overall program budgets, taking into consideration the proposals submitted by the Contractor, consistent with funds appropriated by the Congress and all its other program needs.
- (3) The Contractor shall prepare a final work program and budget consistent with DOE's overall program budget. Upon DOE approval, it is the Contractor's responsibility to conduct its work program within limits established by these approvals unless and until they are modified by DOE.
- (d) In accordance with the basic considerations stated in paragraph (c) above, the Contractor and DOE will utilize the Program Budget procedures on a Government fiscal year basis for the establishment of the Laboratory Program Budget. Procedures for the presentation of work programs and cost estimates shall be jointly developed. In order to meet the requirements of Government budgetary practice, the Parties agree:
- (1) As early as possible in each calendar year, DOE shall supply the Contractor with the dollar amounts for the Laboratory contained in the President's Budget, with

Program assumptions and guidance which the Contractor will be expected to consider in the development of its program and budget, and with all changes to existing budget and accounting policies and procedures to be used in the current budget preparation.

- (2) Prior to April 1 (or such other date as may be agreed upon) the Contractor shall submit to DOE for approval a comprehensive work program for the next two fiscal years, together with a description of the current work program, and the Contractor shall submit a budget estimate for the next two fiscal years, together with a revised budget estimate for the current fiscal year.
 - (3) As soon as possible after October 1 of each year, DOE shall issue Work Authorizations and an Approved Funding Program to the Contractor for the current fiscal year.
- (e)
- (1) DOE approved work programs, program performance expectations and milestones as appropriate, and budget estimates shall be reflected in Work Authorizations/Annual Program Letters/Activity Data Sheets/Program Baseline Summaries and Approved Funding Programs. These documents will be issued to the Contractor as soon as possible after funds become available. If, in preparing Work Authorizations/Annual Program Letters/Activity Data Sheets/Program Baseline Summaries and Approved Funding Programs, it is determined that changes are needed in the work program and budget estimates submitted by the Contractor, DOE and the Contractor shall agree upon the changes in the work before final issuance of these documents, provided, however, that nothing herein shall preclude DOE from directing a change in the work pursuant to the clause of the Contract entitled "Changes".
 - (2) The Work Authorizations/Annual Program Letters, and with respect to any work that may be funded by the Office of Environmental Management, Program Baseline Summaries and Approved Funding Programs, specify the funds available for work under the Contract for the fiscal year and, in addition, may establish limitations on costs to be incurred for individual portions of the work. The Contractor shall comply with such limitations and shall promptly notify the Contracting Officer, in writing, whenever it becomes apparent that there is likely to be an overrun with respect to any specific limitation in the Work Authorization/Annual Program Letters, and with respect to any work that may be funded by the Office of Environmental Management, Program Baseline Summaries, and Approved Funding Programs. Funds made available for work under the contract, and set forth in Approved Funding Programs or other funding documents, shall not be reduced except by written agreement of the Parties.
 - (3) Additional programs and projects to be conducted at the Laboratory within the scope of the Contract may be established by agreement between the DOE and the Contractor.
- (f) A Contract modification shall be issued to the Contractor on or before September 30 of each year (or such other date as may be agreed upon) to provide additional funds, and further Contract modifications may be issued or entered into from time to time to provide

appropriate modifications in the total amount of funds made available under the Contract. DOE agrees to use its best efforts to provide stable funding in support of the Contract work and it is DOE's intention that there shall be so provided at all times sufficient funds to support the work program at the level authorized by DOE.

- (g) During the course of the work, DOE shall review the work program and its costs based upon information submitted by the Contractor and may, after consultation with the Contractor, revise the Work Authorizations and Approved Funding Programs established by DOE under paragraph (e) above. The Contractor shall make any necessary revisions to the documents cited in this clause consistent with DOE direction.
- (h) It is the intent of the Contractor and DOE to agree from time to time upon long-term work programs covering certain portions of the work to be performed under this contract.
- (i) The Contractor shall maintain current cost information adequate to reflect the cost of performing the work under this Contract at all times while the work is in progress, and shall prepare and furnish to the Government such written estimates of cost and information in support thereof as the Contracting Officer may request.

PART II

SECTION I

CONTRACT CLAUSES

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Clause I.1 - FAR 52.202-1 -- Definitions (July 2004)

(a) When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless--

The solicitation, or amended solicitation, provides a different definition;

The contracting parties agree to a different definition;

The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or

The word or term is defined in FAR Part 31, for use in the cost principles and procedures.

(b) The FAR Index is a guide to words and terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at <http://www.acqnet.gov> at the end of the FAR, after the FAR Appendix.

**Clause I.8 – FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions
(Sep 2007)**

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

“Agency” means executive agency as defined in Federal Acquisition Regulation (FAR) 2.101.

“Covered Federal action” means any of the following Federal actions:

- (1) Awarding any Federal contract.
- (2) Making any Federal grant.
- (3) Making any Federal loan.
- (4) Entering into any cooperative agreement.
- (5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

“Indian tribe” and “tribal organization” have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C.450B) and include Alaskan Natives.

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

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

“Officer or employee of an agency” includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (3) A special Government employee, as defined in section 202, Title 18, United States Code.

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

“Person” means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

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

“Reasonable payment” means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

“Recipient” includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

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

“State” means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibition.* 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352 the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contractor the extension, continuation, renewal, amendment, or modification of this contract.

(1) The term *appropriated funds* does not include profit or fee from a covered Federal action.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) *Exceptions.* The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) *Agency and legislative liaison by Contractor employees.*

(i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern—

(A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person's products or services for an agency's use.

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

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(2) *Professional and technical services.*

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation

of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

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

(iii) As used in this paragraph (c)(2), "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).

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

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) Disclosure.

(1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by

paragraph (d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C.1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

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

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

(g) *Subcontracts.*

(1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding \$100,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.

(2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding \$100,000.

Clause I.9A – FAR 52.204-7 Central Contractor Registration (July 2006)

(a) Definitions. As used in this clause—

“Central Contractor Registration (CCR) database” means the primary Government repository for Contractor information required for the conduct of business with the Government.

“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

“Data Universal Numbering System+4 (DUNS+4) number” means the DUNS number means the number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same parent concern.

“Registered in the CCR database” means that—

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record “Active”. The Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

(b)

(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS+4” followed by the DUNS or DUNS+4 number that identifies the offeror’s name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business name.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company physical street address, city, state and Zip Code.

(iv) Company mailing address, city, state and Zip Code (if separate from physical).

(v) Company telephone number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

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

(g)

(1)

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

(A) Change the name in the CCR database;

(B) Comply with the requirements of Subpart 42.12 of the FAR;

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

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

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

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the Internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

Clause I.9B - FAR 52.204-9 Personal Identity Verification of Contractor Personnel (Sep 2007)

(a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

(b) The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

Clause I. 14A - FAR 52.219-4 Notice of Price Evaluation for HUBZone Small Business Concerns
(Jul 2005)

(a) *Definition.* HUBZone small business concern, as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) *Evaluation preference.*

(1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference; and

(ii) Otherwise successful offers from small business concerns.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause 52.219-23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer. These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(c) *Waiver of evaluation preference.* A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference.

___ Offer elects to waive the evaluation preference.

(d) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the HUBZone small business participant or participants;

(f) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

Clause I.15 - FAR 52.219-8 -- Utilization of Small Business Concerns (May 2004)

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

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

(c) *Definitions.* As used in this contract--

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

"Service-disabled veteran-owned small business concern"—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Small disadvantaged business concern" means a small business concern that represents, as part of its offer, that--

- (1) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;
- (2) No material change in disadvantaged ownership and control has occurred since its certification;
- (3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
- (4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

"Veteran-owned small business concern" means a small business concern—

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern--

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteranj-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

Clause I. 16 - FAR 52.219-9 -- Small Business Subcontracting Plan (Nov 2007)

(a) This clause does not apply to small business concerns.

(b) *Definitions.* As used in this clause—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626 (e)(2).

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

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

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

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

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

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

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business concerns, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and with women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business,

service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

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

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

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

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

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

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

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

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

(i) Small business concerns,

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns, and

(vi) Women-owned small business concerns.

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

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business

source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

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

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes);
and
- (vi) Women-owned small business concerns.

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

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

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$550,000 (\$1,000,000 for construction of any public facility) to adopt a plan similar to the plan that complies with the requirements of this clause.

(10) Assurances that the offeror will --

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
- (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small

business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.

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

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

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

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

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

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

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

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

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

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

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

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

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

(A) Trade associations;

(B) Business development organizations;

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

(D) Veterans service organizaions.

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

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

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

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

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

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

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

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

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.

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

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

(1) The master plan has been approved;

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

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

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

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

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

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

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

(j) The Contractor shall submit the following reports:

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

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

Clause I.28A - FAR 52.222-39 – Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004)

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

“United States” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) Except as provided in paragraph (e) of this clause, during the term of this contract, the Contractor shall post a notice, in the form of a poster, informing employees of their rights concerning union membership and payment of union dues and fees, in conspicuous places in and about all its plants and offices, including all places where notices to employees are customarily posted. The notice shall include the following information (except that the information pertaining to National Labor Relations Board shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151-188)).

Notice to Employees

Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll free number:

National Labor Relations Board
Division of Information
1099 14th Street, N.W.
Washington, DC 20570
1-866-667-6572
1-866-316-6572 (TTY)

To locate the nearest NLRB office, see NLRB's website at <http://www.nlr.gov>

(c) The Contractor shall comply with all provisions of Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR Part 470, and orders of the Secretary of Labor.

(d) In the event that the Contractor does not comply with any of the requirements set forth in paragraphs (b), (c), or (g), the Secretary may direct that this contract be cancelled, terminated, or suspended in whole or in part, and declare the Contractor ineligible for further Government contracts in accordance with procedures at 29 CFR part 470, Subpart B--Compliance Evaluations, Complaint Investigations and Enforcement Procedures. Such other sanctions or remedies may be imposed as are provided by 29 CFR Part 470, which implements Executive Order 13201, or as are otherwise provided by law.

(e) The requirement to post the employee notice in paragraph (b) does not apply to--

(1) Contractors and subcontractors that employ fewer than 15 persons;

(2) Contractor establishments or construction work sites where no union has been formally recognized by the Contractor or certified as the exclusive bargaining representative of the Contractor's employees;

(3) Contractor establishments or construction work sites located in a jurisdiction named in the definition of the United States in which the law of that jurisdiction forbids enforcement of union-security agreements;

(4) Contractor facilities where upon the written request of the Contractor, the Department of Labor Deputy Assistant Secretary for Labor-Management Programs has waived the posting requirements with respect to any of the Contractor's facilities if the Deputy Assistant Secretary finds that the Contractor has demonstrated that--

(i) The facility is in all respects separate and distinct from activities of the Contractor related to the performance of a contract; and

(ii) Such a waiver will not interfere with or impede the effectuation of the Executive order; or

(5) Work outside the United States that does not involve the recruitment or employment of workers within the United States.

(f) The Department of Labor publishes the official employee notice in two variations; one for contractors covered by the Railway Labor Act and a second for all other contractors. The Contractor shall--

(1) Obtain the required employee notice poster from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Download a copy of the poster from the Office of Labor-Management Standards website at <http://www.olms.dol.gov>; or

(3) Reproduce and use exact duplicate copies of the Department of Labor's official poster.

(g) The Contractor shall include the substance of this clause in every subcontract or purchase order that exceeds the simplified acquisition threshold, entered into in connection with this contract, unless exempted by the Department of Labor Deputy Assistant Secretary for Labor-Management Programs on account of special circumstances in the national interest under authority of 29 CFR 470.3(c). For indefinite quantity subcontracts, the Contractor shall include the substance of this clause if the value of orders in any calendar year of the subcontract is expected to exceed the simplified acquisition threshold. Pursuant to 29 CFR Part 470, Subpart B--Compliance Evaluations, Complaint Investigations and Enforcement Procedures, the Secretary of Labor may direct the Contractor to take such action in the enforcement of these regulations, including the imposition of sanctions for noncompliance with respect to any such subcontract or purchase order. If the Contractor becomes involved in litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

Clause I.28B - FAR 52.222-50 Combating Trafficking in Persons (Aug 2007)

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

“Coercion” means—

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person;
or
- (3) The abuse or threatened abuse of the legal process.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Involuntary servitude” includes a condition of servitude induced by means of—

- (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means—

- (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) *Policy.* The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not—

- (1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
- (2) Procure commercial sex acts during the period of performance of the contract; or
- (3) Use forced labor in the performance of the contract.

(c) *Contractor requirements.* The Contractor shall—

- (1) Notify its employees of—
 - (i) The United States Government's zero tolerance policy described in paragraph (b) of this clause; and
 - (ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and
- (2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.* The Contractor shall inform the Contracting Officer immediately of—

- (1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and
- (2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.

(e) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may render the Contractor subject to—

- (1) Required removal of a Contractor employee or employees from the performance of the contract;
- (2) Required subcontractor termination;
- (3) Suspension of contract payments;
- (4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(6) Suspension or debarment.

(f) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.

Clause I. 28C - FAR 52.223-3 Hazardous Material Identification and Material Safety Data
(Jan 1997){Alternate I (Jul 1995)}

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

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

Material	Identification No.
<i>(If none, insert "None")</i>	

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

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

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

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

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

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

- (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to --
 - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
 - (ii) Obtain medical treatment for those affected by the material; and
 - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
- (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.
- (3) The Government is not precluded from using similar or identical data acquired from other sources.

Alternate I (Jul 1995)

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

- (1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.
- (2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

Clause I.29B - FAR 52.223-7 Notice of Radioactive Materials (Jan 1997)

(a) The Contractor shall notify the Contracting Officer or designee, in writing, 30 days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either

(1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or

(2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries.

Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

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

(1) Be submitted in writing;

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

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

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

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

Clause I.29C - FAR 52.223-11 Ozone-Depleting Substances (May 2001)

(a) *Definition.* "Ozone-depleting substance," as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as--

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to hydrochlorofluorocarbons.

(b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) *_____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

Clause I.33A - FAR 52.225-8 -- Duty-Free Entry (Feb 2000)

(a) *Definition.* "Customs territory of the United States" means the States, the District of Columbia, and Puerto Rico.

(b) Except as otherwise approved by the Contracting Officer, the Contractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.

(c) Except as provided in paragraph (d) of this clause or elsewhere in this contract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:

(1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$10,000 that are to be imported into the customs territory of the United States for delivery to the Government under this contract, either as end products or for incorporation into end products. The Contractor shall furnish the notice to the Contracting Officer at least 20 calendar days before the importation. The notice shall identify the--

(i) Foreign supplies;

(ii) Estimated amount of duty; and

(iii) Country of origin.

(2) The Contracting Officer will determine whether any of these supplies should be accorded duty-free entry and will notify the Contractor within 10 calendar days after receipt of the Contractor's notification.

(3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.

(d) The Contractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if--

(1) The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(e) The Contractor shall claim duty-free entry only for supplies to be delivered to the Government under this contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Contracting Officer, diverted to nongovernmental use.

(f) The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Contractor in obtaining duty-free entry for these supplies.

(g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the--

- (1) Delivery address of the Contractor (or contracting agency, if appropriate);
- (2) Government prime contract number;
- (3) Identification of carrier;
- (4) Notation "UNITED STATES GOVERNMENT, _____ [agency], _____ Duty-free entry to be claimed pursuant to Item No(s) _____ [from *Tariff Schedules*] _____, Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify [*cognizant contract administration office*] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.";
- (5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and
- (6) Estimated value in United States dollars.

(h) The Contractor shall instruct the foreign supplier to--

- (1) Consign the shipment as specified in paragraph (g) of this clause;
- (2) Mark all packages with the words "UNITED STATES GOVERNMENT" and the title of the contracting agency; and
- (3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

(i) The Contractor shall provide written notice to the cognizant contract administration office immediately after notification by the Contracting Officer that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the--

- (1) Foreign supplies;
- (2) Country of origin;
- (3) Contract number; and
- (4) Scheduled delivery date(s).

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(j) The Contractor shall include the substance of this clause in any subcontract if--

(1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or

(2) Other foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.

Clause I.35 - FAR 52.225-13 -- Restrictions on Certain Foreign Purchases (Feb 2006)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn/>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

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

Clause I. 36 - FAR 52.226-1 -- Utilization of Indian Organizations and Indian-Owned Economic Enterprises (Jun 2000)

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

“Indian” means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any “Native” as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

“Indian organization” means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

“Indian-owned economic enterprise” means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

“Interested party” means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the:

U.S. Department of the Interior
Bureau of Indian Affairs (BIA)
Attn: Chief, Division of Contracting and Grants Administration
1849 C Street, NW, MS-2626-MIB
Washington, DC 20240-4000

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

- (i) The estimated cost of a cost-type contract.
- (ii) The target cost of a cost-plus-incentive-fee prime contract.
- (iii) The target cost and ceiling price of a fixed-price incentive prime contract.
- (iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

Clause I. 36A - FAR 52.227-10 -- Filing of Patent Applications -- Classified Subject Matter
(Dec 2007)

- (a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract classified "Secret" or higher, the Contractor shall, citing the 30-day provision below, transmit the proposed application to the Contracting Officer. The Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of 35 U.S.C. 181-188, or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the Contracting Officer regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the Contracting Officer shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.
- (b) Before filing a patent application in the United States disclosing any subject matter of this contract classified "Confidential," the Contractor shall furnish to the Contracting Officer a copy of the application for Government determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.
- (c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the Contracting Officer.
- (d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the Contracting Officer the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts that require security classification markings to be placed on the application.
- (e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts that cover or are likely to cover classified subject matter.

Clause I.39 - FAR 52.230-6 -- Administration of Cost Accounting Standards (Apr 2005)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (b) through (i) and (k) through (n) of this clause:

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

“Affected CAS-covered contract or subcontract” means a contract or subcontract subject to CAS rules and regulations for which a Contractor or subcontractor--

(1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

(2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

“Cognizant Federal agency official (CFAO)” means the Contracting Officer assigned by the cognizant Federal agency to administer the CAS.

“Desirable change” means a compliant change to a Contractor's established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

“Fixed-price contracts and subcontracts” means--

(1) Fixed-price contracts and subcontracts described at FAR 16.202, 16.203, (except when price adjustments are based on actual costs of labor or material, described at 16.203-1(a)(2)), and 16.207;

(2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (FAR Subpart 16.4);

(3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (FAR Subpart 16.5); and

(4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (FAR Subpart 16.6).

“Flexibly-priced contracts and subcontracts” means--

(1) Fixed-price contracts and subcontracts described 16.203-1(a)(2) at FAR 16.204, 16.205, and 16.206;

(2) Cost-reimbursement contracts and subcontracts (FAR Subpart 16.3);

(3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (FAR Subpart 16.4);

(4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (FAR Subpart 16.5); and

(5) The materials portion of time-and-materials contracts and subcontracts (FAR Subpart 16.6).

“Noncompliance” means a failure in estimating, accumulating, or reporting costs to--

(1) Comply with applicable CAS; or

(2) Consistently follow disclosed or established cost accounting practices.

“Required change” means--

(1) A change in cost accounting practice that a Contractor is required to make in order to comply with a CAS, or a modification or interpretation thereof, that subsequently becomes applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or

(2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the Contractor to remain in compliance.

“Unilateral change” means a change in cost accounting practice from one compliant practice to another compliant practice that a Contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

(b) Submit to the CFAO a description of any cost accounting practice change as outlined in paragraphs (b)(1) through (3) of this clause (including revisions to the Disclosure Statement, if applicable), and any written statement that the cost impact of the change is immaterial. If a change in cost accounting practice is implemented without submitting the notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR 52.230-2, Cost Accounting Standards; paragraph (a)(4) of the clause at FAR 52.230- 3, Disclosure and Consistency of Cost Accounting Practices; or paragraph (a)(2) of the clause at FAR 52.230-5, Cost Accounting Standards--Educational Institution.

(1) When a description has been submitted for a change in cost accounting practice that is dependent on a contract award and that contract is subsequently awarded, notify the CFAO within 15 days after such award.

(2) For any change in cost accounting practice not covered by (b)(1) of this clause that is required in accordance with paragraphs (a)(3) and (a)(4)(i) of the

clause at FAR 52.230-2; or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR 52.230-5; submit a description of the change to the CFAO not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change.

(3) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2 and FAR 52.230-5; or with paragraph (a)(3) of the clause at FAR 52.230-3, submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. If the change includes a proposed retroactive date submit supporting rationale.

(4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR 52.230-2 and FAR 52.230-5; or by paragraph (a)(4) of the clause at FAR 52.230-3)--

(i) Within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after the date of agreement with the CFAO that there is a noncompliance; or

(ii) In the event of Contractor disagreement, within 60 days after the CFAO notifies the Contractor of the determination of noncompliance.

(c) When requested by the CFAO, submit on or before a date specified by the CFAO--

(1) A general dollar magnitude (GDM) proposal in accordance with paragraph (d) or (g) of this clause. The Contractor may submit a detailed cost-impact (DCI) proposal in lieu of the requested GDM proposal provided the DCI proposal is in accordance with paragraph (e) or (h) of this clause;

(2) A detailed cost-impact (DCI) proposal in accordance with paragraph (e) or (h) of this clause;

(3) For any request for a desirable change that is based on the criteria in FAR 30.603-2(b)(3)(ii), the data necessary to demonstrate the required cost savings; and

(4) For any request for a desirable change that is based on criteria other than that in FAR 30.603-2(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change.

(d) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the GDM proposal shall--

(1) Calculate the cost impact in accordance with paragraph (f) of this clause;

(2) Use one or more of the following methods to determine the increase or decrease in cost accumulations:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly-priced contracts and subcontracts;

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The estimated increase or decrease in cost accumulations by Executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts; and

(4) When requested by the CFAO, identify all affected CAS- covered contracts and subcontracts.

(e) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the DCI proposal shall--

(1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;

(2) Show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to include--

(i) Only those affected CAS-covered contracts and subcontracts having an estimate to complete exceeding a specified amount; and

(ii) An estimate of the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (e)(2)(i) of this clause;

(3) Use a format acceptable to the CFAO but, as a minimum, include the information in paragraph (d)(3) of this clause; and

(4) When requested by the CFAO, identify all affected CAS- covered contracts and subcontracts.

(f) For GDM and DCI proposals that are subject to the requirements of paragraph (d) or (e) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS- covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs were incurred (*i.e.*, whether or not the final indirect rates have been established).

(2) For unilateral changes--

(i) Determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

(ii) Determine the increased or decreased cost to the Government for fixed-priced contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

(iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the cost impact been known at the time the contracts and subcontracts were negotiated; and

(iv) Calculate the increased cost to the Government in the aggregate.

(3) For equitable adjustments for required or desirable changes--

(i) Estimated increased cost accumulations are the basis for increasing contract prices, target prices and cost ceilings; and

(ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, target prices and cost ceilings.

(g) For any noncompliant cost accounting practice subject to paragraph (b)(4) of this clause, prepare the GDM proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Use one or more of the following methods to determine the increase or decrease in contract and subcontract prices or cost accumulations, as applicable:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) When the noncompliance involves cost accumulation the change in indirect rates multiplied by the applicable base for only flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease.

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) The increased or decreased cost to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) The total overpayments and underpayments made by the Government during the period of noncompliance.

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

(h) For any noncompliant practice subject to paragraph (b)(4) of this clause, prepare the DCI proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Show the increase or decrease in price and cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to--

(i) Include only those affected CAS-covered contracts and subcontracts having--

(A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and

(B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and

(ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (h)(2)(i) of this clause.

(3) Use a format acceptable to the CFAO that, as a minimum, include the information in paragraph (g)(3) of this clause.

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

(i) For GDM and DCI proposals that are subject to the requirements of paragraph (g) or (h) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS- covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs are incurred (*i.e.*, whether or not the final indirect rates have been established).

(2) For noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the Contractor used a compliant practice, the difference is increased cost to the Government.

(ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the Contractor used a compliant practice, the difference is decreased cost to the Government.

(3) For noncompliances that involve accumulating costs, determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.

(ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is decreased cost to the Government.

(4) Calculate the total increase or decrease in contract and subcontracts incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the Contractor used a compliant practice.

(5) Calculate the increased cost to the Government in the aggregate.

(j) If the Contractor does not submit the information required by paragraph (b) or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO may take one or both of the following actions:

(1) Withhold an amount not to exceed 10 percent of each subsequent amount payment to the Contractor's affected CAS-covered contracts, (up to the estimated general dollar magnitude of the cost impact), until such time as the Contractor provides the required information to the CFAO.

(2) Issue a final decision in accordance with FAR 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.

(k) Agree to--

(1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4)(ii) or (a)(5) of the clauses at FAR 52.230-2 and 52.230-5; or with paragraph (a)(3)(i) or (a)(4) of the clause at FAR 52.230-3; and

(2) Repay the Government for any aggregate increased cost paid to the Contractor.

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

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

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

(3) Within 30 days after award of the subcontract, submit the following information to the Contractor's CFAO:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(m) Notify the CFAO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment to this contract price or estimated cost and fee. The Contractor shall—

(1) Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and

(2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.

(n) For subcontracts containing the clause or substance of the clause at FAR 52.230-2, FAR 52.230-3, or FAR 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

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Clause I. 44A - FAR 52.233-4 -- Applicable Law for Breach of Contract Claim (OCT 2004)

United States law will apply to resolve any claim of breach of this contract.

Clause I.51- FAR 52.247-1 -- Commercial Bill of Lading Notations (Feb 2006)

When the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

(a) If the Government is shown as the consignor or the consignee, the annotation shall be:

Transportation is for the U.S. Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government.

(b) If the Government is not shown as the consignor or the consignee, the annotation shall be:

Transportation is for the U.S. Department of Energy and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement Contract No. DE-AC02-98CH10886. This may be confirmed by contacting the U.S. Department of Energy, Brookhaven Site Office, 53 Bell Avenue, Bldg. 464, Upton, New York 11973.

Clause I.54 - FAR 52.247-67 -- Submission of Transportation Documents for Audit (Feb 2006)

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

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

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

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

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

General Services Administration
Attn: FWA
1800 F Street, NW
Washington, DC 20405

Clause I.55 - FAR 52.249-6 Termination (Cost-Reimbursement) (May 2004)
(Modified by DEAR 970.4905-1)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if --

(1) The Contracting Officer determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

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

(1) Stop work as specified in the notice.

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

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

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

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government --

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

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

(iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

(7) Complete performance of the work not terminated.

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

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; provided, however, that the Contractor

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

(ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer.

The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

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

(e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer.

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

(g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (h)(1) of this clause.

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

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

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

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but

excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) of this clause.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, as supplemented in subpart 970.31 of the Department of Energy Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor --

(1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or

(2) The amount finally determined on an appeal.

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

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

(2) Any claim which the Government has against the Contractor under this contract; and

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

(l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(m)

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

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

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

Clause I.63A – DEAR 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS
(APR 1994)

(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.

[49 FR 12042, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984; 62 FR 2310, Jan. 16, 1997]

Clause I. 76 - DEAR 970.5203-1 Management Controls (JUN 2007) (DEVIATION)

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

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

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

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

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

(c) On an annual basis, the Contractor, through an officer at a level above the President of BSA, shall submit an assurance to the Contracting Officer that the system of management controls, including all systems revised in accordance with the clause of this Contract entitled, "Application of DOE Contractor Requirements Documents", is adequate to assure that the objectives of the management system are being accomplished and that the system and controls are effective and efficient.

Clause I.77 - DEAR 970.5203-2 Performance Improvement and Collaboration (MAY 2006)

(a) The contractor agrees that it shall affirmatively identify, evaluate, and institute practices, where appropriate, that will improve performance in the areas of environmental and health, safety, scientific and technical, security, business and administrative, and any other areas of performance in the management and operation of the contract. This may entail the alteration of existing practices or the institution of new procedures to more effectively or efficiently perform any aspect of contract performance or reduce overall cost of operation under the contract. Such improvements may result from changes in organization, outsourcing decisions, simplification of systems while retaining necessary controls, or any other approaches consistent with the statement of work and performance measures of this contract.

(b) The contractor agrees to work collaboratively with the Department, all other management and operating, DOE major facilities management contractors and affiliated contractors which manage or operate DOE sites or facilities for the following purposes: (i) to exchange information generally, (ii) to evaluate concepts that may be of benefit in resolving common issues, in confronting common problems, or in reducing costs of operations, and (iii) to otherwise identify and implement DOE-complex-wide management improvements discussed in paragraph (a). In doing so, it shall also affirmatively provide information relating to its management improvements to such contractors, including lessons learned, subject to security considerations and the protection of data proprietary to third parties.

(c) The contractor may consult with the contracting officer in those instances in which improvements being considered pursuant to paragraph (a) involve the cooperation of the DOE. The contractor may request the assistance of the contracting officer in the communication of the success of improvements to other management and operating contractors in accordance with paragraph (b) of this clause.

(d) The contractor shall notify the contracting officer and seek approval where necessary to fulfill its obligations under the contract. Compliance with this clause in no way alters the obligations of the Contractor under any other provision of this contract.

CLAUSE I.81A – DEAR 970.5211-1 WORK AUTHORIZATION (MAY 2007)

(a) Work authorization proposal. Prior to the start of each fiscal year, the Contracting Officer or designee shall provide the contractor with program execution guidance in sufficient detail to enable the contractor to develop an estimated cost, scope, and schedule. In addition, the Contracting Officer may unilaterally assign work. The contractor shall submit to the Contracting Officer or other designated official, a detailed description of work, a budget of estimated costs, and a schedule of performance for the work it recommends be undertaken during that upcoming fiscal year.

(b) Cost estimates. The contractor and the Contracting Officer shall establish a budget of estimated costs, description of work, and schedule of performance for each work assignment. If agreement cannot be reached as to scope, schedule, and estimated cost, the Contracting Officer may issue a unilateral work authorization, pursuant to this clause. The work authorization, whether issued bilaterally or unilaterally shall become part of the contract. No activities shall be authorized or costs incurred prior to Contracting Officer issuance of a work authorization or direction concerning continuation of activities of the contract.

(c) Performance. The contractor shall perform work as specified in the work authorization, consistent with the terms and conditions of this contract.

(d) Modification. The Contracting Officer may at any time, without notice, issue changes to work authorizations within the overall scope of the contract. A proposal for adjustment in estimated costs and schedule for performance of work, recognizing work made unnecessary as a result, along with new work, shall be submitted by the contractor in accordance with paragraph (a) of this clause. Resolution shall be in accordance with paragraph (b) of this clause.

(e) Increase in estimated cost. The contractor shall notify the Contracting Officer immediately whenever the cost incurred, plus the projected cost to complete work is projected to differ (plus or minus) from the estimate by 10 percent. The contractor shall submit a proposal for modification in accordance with paragraph (a) of this clause. Resolution shall be in accordance with paragraph (b) of this clause.

(f) Expenditure of funds and incurrence of costs. The expenditure of monies by the contractor in the performance of all authorized work shall be governed by the "Obligation of Funds" or equivalent clause of the contract.

(g) Responsibility to achieve environment, safety, health, and security compliance. Notwithstanding other provisions of the contract, the contractor may, in the event of an emergency, take that corrective action necessary to sustain operations consistent with applicable environmental, safety, health, and security statutes, regulations, and procedures. If such action is taken, the contractor shall notify the Contracting Officer within 24 hours of initiation and, within 30 days, submit a proposal for adjustment in estimated costs and schedule established in accordance with paragraphs (a) and (b) of this clause.

Clause I.91 - DEAR 970.5227-2 Rights in Data -- Technology Transfer (Deviation-July 2006)

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

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

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

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

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

(6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

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

(8) Open Source Software, as used in this clause, means computer software that is distributed under a license in which the user is granted the rights to use, copy, modify, prepare derivative works and distribute, in source code or other format, the software, in original or modified form and derivative works thereof, without having to make royalty payments. The Contractor's right to distribute computer software first produced in the performance of this Contract as Open Source Software is as set forth in paragraph (f).

(b) *Allocation of Rights.* (1) The Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, and except for data subject to the withholding provisions for protected Cooperative Research and Development Agreement (CRADA) information in accordance with Technology Transfer actions under this Contract, or other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (h) of this clause ("Rights in Limited Rights Data") or paragraph (i) of this clause ("Rights in Restricted Computer Software"); and (v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in provisions of this clause;

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data; and

(iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as

provided in paragraph (e) of this clause.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information which it receives from, or is given access to by DOE or a third party, including a DOE contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) *Copyright (General)*. (1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) of this clause.

(2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d) or (e) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the data prior to its delivery.

(d) *Copyrighted Works (Scientific and Technical Articles)*. (1) The Contractor shall have the right to assert, without prior approval of the contracting officer, copyright subsisting in scientific and technical articles composed under this contract or 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. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) The contractor shall mark each scientific or technical article first produced or composed under this Contract and submitted for journal publication or similar means of dissemination with a notice, similar in all material respects to the following, on the front reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright.

Notice: This manuscript has been authored by [insert the name of the Contractor] under Contract No. [insert the contract number] with the U.S. Department of Energy. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, world-wide license to publish or reproduce the published form of

this manuscript, or allow others to do so, for United States Government purposes.

(End of Notice)

(3) The title to the copyright of the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.

(e) Copyrighted Works (Other Than Scientific and Technical Articles and Data Produced under a CRADA). The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:

(1) Contractor Request to Assert Copyright.

(i) For data other than scientific and technical articles and data produced under a CRADA, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this Contract pursuant to this clause. The right of the Contractor to copyright data first produced under a CRADA is as described in the individual CRADA. Each request by the Contractor must include:

(A) The identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes, (B) The program under which it was funded, (C) Whether, to the best knowledge of the Contractor, the data is subject to an international treaty or agreement, (D) Whether the data is subject to export control, (E) A statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled, "Technology Transfer Mission," within five (5) years after obtaining permission to assert copyright or, on a case-by-case basis, a specified longer period where the Contractor can demonstrate that the ability to commercialize effectively is dependent upon such longer period, and (F) For data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization and is consistent with DOE's dissemination responsibilities.

(ii) For data that is developed using other funding sources in addition to DOE funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.

(iii) Permission for the Contractor to assert copyright in excepted categories of data as determined by DOE will be expressly withheld. Such excepted categories include data whose release (A) would be detrimental to national security, i.e., involve classified information or data or sensitive information under Section 148 of the

Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes, (B) would not enhance the appropriate transfer or dissemination and commercialization of such data, (C) would have a negative impact on U.S. industrial competitiveness, (D) would prevent DOE from meeting its obligations under treaties and international agreements, or (E) would be detrimental to one or more of DOE's programs. Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property. Where data are determined to be under export control restriction, the Contractor may obtain permission to assert copyright subject to the provisions of this clause for purposes of limited commercialization in a manner that complies with export control statutes and applicable regulations. In addition, notwithstanding any other provision of this Contract, all data developed with Naval Reactors' funding and those data that are classified fall within excepted categories. The rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified under this Contract as well as those additional treaties and international agreements which DOE may from time to time identify by unilateral amendment to the Contract; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such treaty or international agreement is added to this Contract. Also, the Contractor will not be permitted to assert copyright in data in the form of various technical reports generated by the Contractor under the Contract without first obtaining the advanced written permission of the contracting officer.

(2) DOE Review and Response to Contractor's Request. The Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE's permission for the Contractor to assert copyright or advise the Contractor that DOE needs additional time to respond, and the reasons therefor.

(3) Permission for Contractor to Assert Copyright.

(i) For computer software, the Contractor shall furnish to the DOE designated, centralized software distribution and control point, the Energy Science and Technology Software Center, at the time permission to assert copyright is given under paragraph (e)(2) of this clause: (A) An abstract describing the software suitable for publication, (B) the source code for each software program, and (C) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software. The Patent Counsel, for good cause shown by the Contractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. The Contractor acknowledges that the DOE designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

(ii) Unless otherwise directed by the contracting officer, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (e)(2) of this clause above, the Contractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) a copy of such data as well as an abstract of the data

suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.

(iii) For a five year period or such other specified period as specifically approved by Patent Counsel beginning on the date the Contractor is given permission to assert copyright in data, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or on behalf of the Government. Upon request, the initial period may be extended after DOE approval. The DOE approval will be based on the standard that the work is still commercially available and the market demand is being met.

(iv) After the period approved by Patent Counsel for application of the limited Government license described in paragraph (e)(3)(iii) of this clause, or if, prior to the end of such period(s), the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(v) Whenever the Contractor asserts copyright in data pursuant to this paragraph (e), the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs (e)(3) (iii) and (iv) of this clause. Such action shall be taken when the data are delivered to the Government, published, licensed or deposited for registration as a published work in the U.S. Copyright Office. The acknowledgment of Government sponsorship and license rights shall be as follows:

Notice: These data were produced by (insert name of Contractor) under Contract No. with the Department of Energy. For (period approved by DOE Patent Counsel) from (date permission to assert copyright was obtained), the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. There is provision for the possible extension of the term of this license. Subsequent to that period or any extension granted, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor or DOE. NEITHER THE UNITED STATES NOR THE UNITED STATES DEPARTMENT OF ENERGY, NOR ANY OF THEIR EMPLOYEES, MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS, OR USEFULNESS OF ANY DATA, APPARATUS, PRODUCT, OR PROCESS DISCLOSED, OR REPRESENTS THAT ITS USE WOULD NOT INFRINGE PRIVATELY OWNED RIGHTS.

(End of Notice)

(vi) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the five (5) year or specified longer period approved by Patent Counsel as provided for in paragraph (e) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(A) of this clause. Before licensing under this subparagraph (vi), DOE shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the contracting officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65 -- "Appeals."

(vii) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE Program needs, except as expressly provided in writing by the contracting officer. The Contractor may use its net royalty income to effect such maintenance costs.

(viii) At any time the Contractor abandons commercialization activities for data for which the Contractor has received permission to assert copyright in accordance with this clause, it shall advise OSTI and Patent Counsel and upon request assign the copyright to the Government so that the Government can distribute the data to the public.

(4) The following notice may be placed on computer software prior to any publication and prior to the Contractor's obtaining permission from the Department of Energy to assert copyright in the computer software pursuant to paragraph (c)(3) of this section.

Notice: This computer software was prepared by [insert the Contractor's name and the individual author], hereinafter the Contractor, under Contract [insert the Contract Number] with the Department of Energy (DOE). All rights in the computer software are reserved by DOE on behalf of the United States Government and the Contractor as provided in the Contract. You are authorized to use this computer software for Governmental purposes but it is not to be released or distributed to the public. NEITHER THE GOVERNMENT NOR THE CONTRACTOR MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LIABILITY FOR THE USE OF THIS SOFTWARE. This notice including this sentence must appear on any copies of this computer software.

(End of Notice)

(5) A similar notice can be used for data, other than computer software, upon approval of DOE Patent Counsel.

(f) *Open Source Software*. The Contractor may release computer software first produced by the Contractor in the performance of this Contract under an open source software license. Such

software shall hereinafter be referred to as Open Source Software or OSS, subject to the following:

(1) Obtain Program Approval.

(i) The Contractor shall ensure that the DOE Program or Programs that have provided funding (Funding Source) to develop the software have approved the distribution of the software as OSS. The funding Program(s) may provide blanket approval for all software developed with funding from that Program. However, OSS release for any one such software shall be subject to approval by all other funding Programs which provide a substantial portion of the funds for the software, if any. If approval from the funding Program(s) is not practicable, DOE Patent Counsel may provide approval instead. For software jointly developed under a CRADA or User Facility, authorization from the CRADA Participant(s) or User Facility User(s), as applicable, shall be additionally obtained for OSS release.

(ii) If the software is developed with funding from a federal government agency or agencies other than DOE, then authorization from all the funding source(s) shall be obtained for OSS release, if practicable. Such federal government agency(ies) may provide blanket approval for all software developed with funding from that agency. However, OSS release of any one of such software shall be subject to approval by all other funding sources for the software, if any. If majority approval from such federal government agency(s) is not practicable, DOE Patent Counsel may provide approval instead.

(2) Assert Copyright in the OSS. Once the Contractor has obtained Funding Source approval in accordance with subparagraph (1) of this section, copyright in the software to be distributed as OSS, may be asserted by the Contractor, or, for OSS developed under a CRADA or User Facility, either by the Contractor, CRADA Participant, or User Facility User, as applicable, which precludes marking such OSS as Protected Information.

(3) Form DOE F 241.4 for OSS to ESTSC. The Contractor must submit the form DOE F 241.4 (or the current form as may be required by DOE) to DOE's Energy Science and Technology Software Center (ESTSC) at the Office of Scientific and Technical Information (OSTI). The Contractor shall provide the unique URL on the form for ESTSC to distribute.

(4) OSS Record. The Contractor must maintain a record, available for inspection by DOE, of software distributed as OSS. The record shall contain the following information: (i) name of the computer software (or other identifier), (ii) an abstract with description or purpose of the software, (iii) evidence of the funding Program's or source's approval, (iv) the planned or actual OSS location on the Contractor's webpage or other publicly available location (see subparagraph (5) below); (v) any names, logos or other identifying marks used in connection with the OSS, whether or not registered; (vi) the type of OSS license used; and (vii) release version of the software for OSS containing derivative works. Upon request of Patent Counsel, the Contractor shall periodically provide Patent Counsel a copy of the record.

(5) Provide Public Access to the OSS. The Contractor shall ensure that the OSS is publicly accessible as an open source via the Contractor's website, Open Source Bulletin Boards operated by third parties, DOE, or other industry standard means.

(6) Select an OSS License. Each OSS will be distributed pursuant to an OSS license.

The Contractor may choose among industry standard OSS licenses or create its own set of Contractor standard licenses. To assist the Contractor, the DOE Assistant General Counsel for Technology Transfer and Intellectual Property may periodically issue guidance on OSS licenses. Each Contractor created OSS license, must contain, at a minimum, the following provisions:

(i) A disclaimer or equivalent that disclaims the Government's and Contractor's liability for licensees' and third parties' use of the software; and

(ii) A grant of permission for licensee to distribute OSS containing the licensee's derivative works subject to trademark restrictions (see subparagraph (10) below). This provision might allow the licensee and third parties to commercialize their derivative works or might request that the licensee's derivative works be forwarded to the Contractor for incorporation into future OSS versions.

(7) Collection of administrative costs is permissible. However, the Contractor may not collect a royalty or other fee in excess of a good faith amount for cost recovery from any licensee for the Contractor's OSS.

(8) Relationship to Other Required Clauses in the Contract. OSS distributed in accordance with this section shall not be subject to the requirements relating to indemnification of the Contractor or Federal Government, U.S. Competitiveness and U.S. Preference as set forth in paragraphs (g) and (h) of the clause within this contract entitled Technology Transfer Mission (DEAR 970.5227-3). The requirement for Contractor to request permission to assert copyright for the purpose of engaging in licensing software for royalties as set forth elsewhere in this clause is not modified by this section.

(9) Performance of Periodic Export Control Reviews by the Contractor. The Contractor is required to follow its Export Control review procedures before designating any software as OSS. If the Contractor is integrating the original OSS with other copyrightable works created by the Contractor or third parties, the Contractor may need to perform periodic export control reviews of the derivative versions.

(10) Determine if Trademark Protection for the OSS is Appropriate. DOE Programs and Contractors have established trademarks on some of their computer software. Therefore, the Contractor should determine whether the OSS is already protected by use of an existing trademark. If the OSS is not so protected, then the Program or the Contractor may want to seek trademark protection. If the OSS is protected by a trademark, the OSS license should state that the derivative works of the licensee or other third party may not be distributed using the proprietary trademark without appropriate prior approval.

(11) Government License. For all OSS, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in data copyrighted in accordance with paragraph (f)(2) of this clause to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(12) Availability of Original OSS. The object code and source code of the original OSS

developed by the Contractor shall be available to any third party who requests such from the Contractor for so long as such OSS is publicly available. If the Contractor ceases to make the software publicly available, then the Contractor shall submit to ESTSC the object code and source code of the latest version of the OSS developed by the Contractor in addition to a revised DOE F 241.4 form (which includes an abstract) and the Contractor shall direct any inquiries from third parties seeking to obtain the original OSS to ESTSC.

(g) *Subcontracting.* (1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data -- General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with 48 CFR 927.409(h). The Contractor shall use instead the Rights in Data -- Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.

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

(i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the contracting officer.

(3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data and restricted computer software for their private use.

(h) *Rights in Limited Rights Data.* Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights

Notice" set forth below. All such limited rights data shall be marked with the following "Limited Rights Notice:"

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;

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

(c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

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

(End of Notice)

(i) *Rights in Restricted Computer Software.* (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract; provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice:"

Restricted Rights Notice -- Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No. . It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice -- Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. with (name of Contractor).

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the

Long Form Notice, then the contract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished -- rights reserved under the Copyright Laws of the United States."

(j) *Relationship to Patents.* Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

Clause I.92 - DEAR 970.5227-3 Technology Transfer Mission (Deviation-July 2006; Alternate I)

This clause has as its purpose implementation of the National Competitiveness Technology Transfer Act of 1989 (Sections 3131, 3132, 3133, and 3157 of Pub. L. 101-189 and as amended by Pub. L. 103-160, Sections 3134 and 3160). The Contractor shall conduct technology transfer activities with a purpose of providing benefit from Federal research to U.S. industrial competitiveness.

(a) *Authority.* (1) In order to ensure the full use of the results of research and development efforts of, and the capabilities of, the Laboratory, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Laboratory consistent with the policy, principles and purposes of Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a); Section 3132(b) of Pub. L. 101-189, Sections 3134 and 3160 of Pub. L. 103-160, and of Chapter 38 of the Patent Laws (35 U.S.C. 200 *et seq.*); Section 152 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2182); Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); and Executive Order 12591 of April 10, 1987.

(2) In pursuing the technology transfer mission, the Contractor is authorized to conduct activities including but not limited to: identifying and protecting Intellectual Property made, created or acquired at or by the Laboratory; negotiating licensing agreements and assignments for Intellectual Property made, created or acquired at or by the Laboratory that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Work for Others (WFO); providing information exchanges; and making available laboratory or weapon production user facilities. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, WFO, science education activities, consulting, personnel exchanges, assignments, and licensing in accordance with this clause.

(b) *Definitions.* (1) Contractor's Laboratory Director means the individual who has supervision over all or substantially all of the Contractor's operations at the Laboratory.

(2) Intellectual Property means patents, trademarks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.

(3) Cooperative Research and Development Agreement (CRADA) means any agreement entered into between the Contractor as operator of the Laboratory, and one or more parties including at least one non-Federal party under which the Government, through its laboratory, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal

parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Laboratory; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31 of the United States Code.

(4) Joint Work Statement (JWS) means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's Laboratory Director or designee which describes the following:

(i) Purpose;

(ii) Scope of Work which delineates the rights and responsibilities of the Government, the Contractor and Third Parties, one of which must be a non-Federal party;

(iii) Schedule for the work; and

(iv) Cost and resource contributions of the parties associated with the work and the schedule.

(5) Assignment means any agreement by which the Contractor transfers ownership of Laboratory Intellectual Property, subject to the Government's retained rights.

(6) Laboratory Biological Materials means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products, made under this contract by Laboratory employees or through the use of Laboratory research facilities.

(7) Laboratory Tangible Research Product means tangible material results of research which

(i) are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility;

(ii) are not materials generally commercially available; and

(iii) were made under this contract by Laboratory employees or through the use of Laboratory research facilities.

(8) Bailment means any agreement in which the Contractor permits the

commercial or non-commercial transfer of custody, access or use of Laboratory Biological Materials or Laboratory Tangible Research Product for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.

(9) Privately funded technology transfer means the prosecuting, maintaining, licensing, and marketing of inventions which are not owned by the Government (and not related to CRADAs) when such activities are conducted entirely without the use of Government funds.

(c) *Allowable Costs.* (1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710). The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this Contract. In addition to any separately designated funds, these costs in any fiscal year shall not exceed an amount equal to 0.5 percent of the operating funds included in the Federal research and development budget (including Work For Others) of the Laboratory for that fiscal year without written approval of the contracting officer.

(2) The Contractor's participation in litigation to enforce or defend Intellectual Property claims incurred in its technology transfer efforts shall be as provided in the clause entitled "Insurance -- Litigation and Claims" of this contract.

(d) *Conflicts of Interest -- Technology Transfer.* The Contractor shall have implementing procedures that seek to avoid employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the conduct of its technology transfer activities. These procedures shall apply to other persons participating in Laboratory research or related technology transfer activities. Such implementing procedures shall be provided to the contracting officer for review and approval within sixty (60) days after execution of this contract. The contracting officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:

(1) Inform employees of and require conformance with standards of conduct and integrity in connection with research involving nonfederal sponsors and for CRADA activity in accordance with the provisions of paragraph (n)(5) of this clause;

(2) Review and approve employee activities so as to avoid conflicts of interest

arising from commercial utilization activities relating to Contractor-developed Intellectual Property;

(3) Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE projects and programs;

(4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or WFO activities of the Contractor;

(5) Conduct DOE-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts of interest with non-Government funded work;

(6) Notify the contracting officer with respect to any new work to be performed or proposed to be performed under the Contract for DOE or other Federal agencies where the new work or proposal involves Intellectual Property in which the Contractor has obtained or intends to request or elect title;

(7) Except as provided elsewhere in this Contract, obtain the approval of the contracting officer for any licensing of or assignment of title to Intellectual Property rights by the Contractor to any business or corporate affiliate of the Contractor;

(8) Obtain the approval of the contracting officer prior to any assignment, exclusive licensing, or option for exclusive licensing, of Intellectual Property to any individual who has been a Laboratory employee within the previous two years or to the company in which the individual is a principal;

(9) Notify non-Federal sponsors of WFO activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of WFOs or user agreements; and

(10) Notify DOE prior to the Contractor's evaluating a technical proposal for funding by a third party or a DOE Program, when the subject matter of the proposal involves an elected or waived subject invention under this contract or one in which the Contractor intends to elect to retain title under this contract.

(e) *Fairness of Opportunity*. In conducting its technology transfer activities, the Contractor shall prepare procedures and take all reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the Laboratory and by entities other than the Contractor.

(f) *U.S. Industrial Competitiveness for Licensing and Assignments of Intellectual*

Property. (1) In the interest of enhancing U.S. Industrial Competitiveness in its licensing and assignments of Intellectual Property, the Contractor shall give preference in such a manner as to enhance the accrual of economic and technological benefits to the U.S. domestic economy. The Contractor shall consider the following factors in all of its decisions involving licensing and assignment of Laboratory intellectual property where the Laboratory obtains rights during the course of the Contractor's operation of the Laboratory under this contract:

(i) whether any resulting design and development will be performed in the United States and whether resulting products, embodying parts, including components thereof, will be substantially manufactured in the United States; or

(ii) (A) whether a proposed licensee or an assignee has a business unit located in the United States and whether significant economic and technical benefits will flow to the United States as a result of the license or assignment agreement;

(B) in licensing or assigning any entity subject to the control of a foreign company or government, whether such foreign government permits United States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements, and has policies to protect United States Intellectual Property rights; and

(C) if the proposed licensee, assignee, or parent of either type of entity is subject to the control of a foreign company or government, the Contractor, with the assistance of the Contracting Officer, in considering the factors set forth in paragraph (B) herein, may rely upon the following information; (1) U.S. Trade Representative Inventory of Foreign Trade Barriers, (2) U.S. Trade Representative Special 301 Report, and, (3) such other relevant information available to the contracting officer. The Contractor should review the U.S. Trade Representative web site at: <<http://www.ustr.gov>> for the most current versions of these reports and other relevant information. The Contractor is encouraged to utilize other available resources, as necessary, to allow for a complete and informed decision.

(2) If the Contractor determines that neither of the conditions in paragraphs (f)(1)(i) or (ii) of this clause is likely to be fulfilled, the Contractor, prior to entering into such an agreement, must obtain the approval of the contracting officer. The contracting officer shall act on any such requests for approval within thirty (30) days.

(3) The Contractor agrees to be bound by the provisions of 35 U.S.C. 204 (Preference for United States industry).

(g) *Indemnity -- Product Liability.* In entering into written technology transfer agreements, including but not limited to, research and development agreements, licenses, assignments and CRADAs, the Contractor agrees to include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses,

including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. The Contractor shall identify and obtain the approval of the contracting officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.

(h) *Disposition of Income.* (1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the Laboratory, consistent with the research and development mission and objectives of the Laboratory and subject to Section 12(b)(5) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(b)(5)) and Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.) as amended through the effective date of this contract award or modification. If the net amounts of such royalties and income received from patent licensing after payment of patenting costs, licensing costs, payments to inventors and other expenses incidental to the administration of Subject Inventions during any fiscal year exceed 5 percent of the Laboratory's budget for that fiscal year, 75 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be Subject Inventions under the Contract.

(2) The Contractor shall include as a part of its annual Laboratory Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the Laboratory, and at the end of the year, provide a separate accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for an illegal augmentation of funds furnished by the U.S. Government.

(3) The Contractor shall establish subject to the approval of the contracting officer a policy for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the contracting officer.

(i) *Transfer to Successor Contractor.* In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the Laboratory shall be transferred, at the contracting officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The Contractor shall transfer title, as one package, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the Laboratory, to the successor contractor or to the Government as directed by the contracting officer.

(j) *Technology Transfer Affecting the National Security.* (1) The Contractor shall notify and obtain the approval of the contracting officer, prior to entering into any technology transfer arrangement, when such technology or any part of such technology is classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168). Such notification shall include sufficient information to enable DOE to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE's nuclear weapon production complex. DOE shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and DOE shall promptly notify the Contractor as to whether the technology is transferable.

(2) The Contractor shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADAs, licensing agreements and assignments, notice to such third parties that the export of goods and/or Technical Data from the United States may require some form of export control license or other authority from the U.S. Government and that failure to obtain such export control license may result in criminal liability under U.S. laws.

(3) For other than fundamental research as defined in National Security Decision Directive 189, the Contractor is responsible to conduct internal export control reviews and assure that technology is transferred in accordance with applicable law.

(k) *Records.* The Contractor shall maintain records of its technology transfer activities in a manner and to the extent satisfactory to the DOE and specifically including, but not limited to, the licensing agreements, assignments and the records required to implement the requirements of paragraphs (e), (f), and (h) of this clause and shall provide reports to the contracting officer to enable DOE to maintain the reporting requirements of Section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(6)). Such reports shall be made annually in a format to be agreed upon between the Contractor and DOE and in such a format which will serve to adequately inform DOE of the Contractor's technology transfer activities while protecting any data not subject to disclosure under the Rights in Technical Data clause and paragraph (n) of this clause. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

(l) *Reports to Congress.* To facilitate DOE's reporting to Congress, the Contractor is required to submit annually to DOE a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan shall be provided to the contracting officer on or before October 1st of each year.

(m) *Oversight and Appraisal.* The Contractor is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this Contract. Laboratory Contractor performance in implementing the technology transfer mission and the effectiveness of the Contractor's procedures will be evaluated by the contracting officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.

(n) *Technology Transfer through Cooperative Research and Development Agreements.* Upon approval of the contracting officer and as provided in a DOE approved Joint Work Statement (JWS), the Laboratory Director, or designee, may enter into CRADAs on behalf of the DOE subject to the requirements set forth in this paragraph.

(1) *Review and Approval of CRADAs.* (i) Except as otherwise directed in writing by the contracting officer, each JWS shall be submitted to the contracting officer for approval. The Contractor's Laboratory Director or designee shall provide a program mission impact statement and shall include an impact statement regarding related Intellectual Property rights known by the Contractor to be owned by the Government to assist the contracting officer in the approval determination.

(ii) The Contractor shall also include (specific to the proposed CRADA), a statement of compliance with the Fairness of Opportunity requirements of paragraph (e) of this clause.

(iii) Within thirty (30) days after submission of a JWS or proposed CRADA, the contracting officer shall approve, disapprove or request modification to the JWS or CRADA. The contracting officer shall provide a written explanation to the Contractor's Laboratory Director or designee of any disapproval or requirement for modification of a JWS or proposed CRADA.

(iv) Except as otherwise directed in writing by the contracting officer, the Contractor shall not enter into, or begin work under, a CRADA until approval of the CRADA has been granted by the contracting officer. The Contractor may submit its proposed CRADA to the contracting officer at the time of submitting its proposed JWS or any time thereafter.

(2) *Selection of Participants.* The Contractor's Laboratory Director or designee in deciding what CRADA to enter into shall:

(i) Give special consideration to small business firms, and consortia involving small business firms;

(ii) Give preference to business units located in the United States which agree that products or processes embodying Intellectual Property will be substantially manufactured or practiced in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government,

take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements;

(iii) Provide Fairness of Opportunity in accordance with the requirements of paragraph (e) of this clause; and

(iv) Give consideration to the Conflicts of Interest requirements of paragraph (d) of this clause.

(3) *Withholding of Data.* (i) Data that is first produced as a result of research and development activities conducted under a CRADA and that would be a trade secret or commercial or financial data that would be privileged or confidential, if such data had been obtained from a non-Federal third party, may be protected from disclosure under the Freedom of Information Act as provided in the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(7)) for a period as agreed in the CRADA of up to five (5) years from the time the data is first produced. The DOE shall cooperate with the Contractor in protecting such data.

(ii) Unless otherwise expressly approved by the contracting officer in advance for a specific CRADA, the Contractor agrees, at the request of the contracting officer, to transmit such data to other DOE facilities for use by DOE or its Contractors by or on behalf of the Government. When data protected pursuant to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.

(iii) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the Contractor under a CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing of data as an alternative to the submittal of invention disclosures which include data protected pursuant to paragraph (n)(3)(i) of this clause.

(4) *Work for Others and User Facility Programs.* (i) Work for Others (WFO) and User Facility Agreements (UFAs) are not CRADAs and will be available for use by the Contractor in addition to CRADAs for achieving utilization of employee expertise and unique facilities for maximizing technology transfer. The Contractor agrees to inform prospective CRADA participants, which are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, i.e., WFO and UFA, and of the Class Patent Waiver provisions associated therewith.

(ii) Where the Contractor believes that the transfer of technology to the U.S. domestic economy will benefit from, or other equity considerations dictate, an

arrangement other than the Class Waiver of patent rights to the sponsor in WFO and UFAs, a request may be made to the contracting officer for an exception to the Class Waivers.

(iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE approval, in such agreements, and the provisions in such agreements take precedence over any disposition of rights contained in this Contract. Disposition of rights under any such agreement shall be in accordance with any DOE class waiver (including Work for Others and User Class Waivers) or individually negotiated waiver which applies to the agreement.

(5) *Conflicts of Interest.* (i) Except as provided in paragraph (n)(5)(iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA, if, to such employee's knowledge:

(A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee –

(1) holds financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;

(2) receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA; or

(B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.

(ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA certify through the Contractor to the contracting officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.

(iii) The requirements of paragraphs (n)(5)(i) and (n)(5)(ii) of this clause shall not apply in a case where the contracting officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs in the preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the contracting officer determines that such financial interest is not so substantial as to be considered

likely to affect the integrity of the Contractor employee's participation in the process of preparing, negotiating, or approving the CRADA.

(o) *Technology Transfer in Other Cost-Sharing Agreements.* In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the contracting officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.

(p) *Technology Partnership Ombudsman.* (1) The Contractor agrees to establish a position to be known as "Technology Partnership Ombudsman," to help resolve complaints from outside organizations regarding the policies and actions of the contractor with respect to technology partnerships (including CRADAs), patents owned by the contractor for inventions made at the laboratory, and technology licensing.

(2) The Ombudsman shall be a senior official of the Contractor's laboratory staff, who is not involved in day-to-day technology partnerships, patents or technology licensing, or, if appointed from outside the laboratory or facility, shall function as such senior official.

(3) The duties of the Technology Partnership Ombudsman shall include:

(i) Serving as the focal point for assisting the public and industry in resolving complaints and disputes with the laboratory or facility regarding technology partnerships, patents, and technology licensing;

(ii) Promoting the use of collaborative alternative dispute resolution techniques such as mediation to facilitate the speedy and low cost resolution of complaints and disputes, when appropriate; and

(iii) Submitting a quarterly report, in a format provided by DOE, to the Secretary of Energy, the Administrator for Nuclear Security, the Director of the DOE Office of Dispute Resolution, and the Contracting Officer concerning the number and nature of complaints and disputes raised, along with the Ombudsman's assessment of their resolution, consistent with the protection of confidential and sensitive information.

(q) *Inapplicability of Provisions to Privately Funded Technology Transfer Activities.* Nothing in paragraphs (c) Allowable Costs, (e) Fairness of Opportunity, (f) U.S. Industrial Competitiveness, (g) Indemnity -- Product Liability, (h) Disposition of Income, and (i) Transfer to Successor Contractor of this clause are intended to apply to the contractor's privately funded technology transfer activities if such privately funded activities are addressed elsewhere in the contract.

Clause I.103 - DEAR 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION (JUN 2007)

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

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

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

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

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

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

(g) Subcontracts. The contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including

fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

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

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

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

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

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

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

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

(iii) The audit organization's relationship to the corporate entities of the contractor;

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

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

(vi) The intended use of external audit resources;

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

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

(2) By each January 31 of the contract performance period, the contractor must submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal

year. That report shall reflect the results of the internal audits during the previous fiscal year and the actions to be taken to resolve weaknesses identified in the contractor's system of business, financial, or management controls.

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

(4) The contracting officer may require revisions to documents submitted under paragraphs (i)(1), (i)(2), and (i)(3) of this clause, including the design plan for the internal audits, the annual report, and the annual internal audits.

(j) Remedies. If at any time during contract performance, the contracting officer determines that unallowable costs were claimed by the contractor to the extent of making the contractor's management controls suspect, or the contractor's management systems that validate costs incurred and claimed suspect, the contracting officer may, in his or her sole discretion, require the contractor to cease using the special financial institution account in whole or with regard to specified accounts, requiring reimbursable costs to be claimed by periodic vouchering. In addition, the contracting officer, where he or she deems it appropriate, may: Impose a penalty under 970.5242-1, Penalties for unallowable costs; require a refund; reduce the contractor's otherwise earned fee; and take such other action as authorized in law, regulation, or this contract.

CLAUSE NO.	FAR/DEAR REFERENCE	TITLE OF SECTION/CLAUSE
PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS		
J.1		Appendix A - Advance Understandings on Human Resources
J.2		Appendix B - Performance Evaluation and Measurement Plan <ul style="list-style-type: none">• FY 2006 Mod M138• FY 2007 Mod M153• FY 2008 Mod M175
J.3		Appendix C - Special Financial Institution Account
J.4		Appendix D - Budget Program
J.5		Appendix E - Key Personnel
J.6		Appendix F - Reserved
J.7		Appendix G - Purchasing System Requirements
J.8		Appendix H - Small Business Subcontracting Plan <ul style="list-style-type: none">• FY 2006 Mod M144• FY 2007 Mod M159• FY 2008 Mod M175
J.9		Appendix I - DOE Directives/List B
J.10		Appendix J - Treaties and International Agreements/Waived Inventions
J.11		Appendix K - Reserved
J.12		Appendix L - Computation of Fee <ul style="list-style-type: none">• FY 2006 Mod M138• FY 2007 Mod M153• FY 2008 Mod M175
J.13		Appendix M - Contract Guidance for Preparation of Diversity Plan

U.S. Department of Energy
and
Brookhaven Science Associates, LLC

ATTACHMENT J.2

APPENDIX B

**PERFORMANCE EVALUATION AND
MEASUREMENT PLAN**

FY 2008

BROOKHAVEN NATIONAL LABORATORY

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INTRODUCTION

This document, the Performance Evaluation and Measurement Plan (PEMP), primarily serves as DOE's Quality Assurance/Surveillance Plan (QASP) for the evaluation of Brookhaven Science Associates (hereafter referred to as "the Contractor") performance regarding the management and operations of the Brookhaven National Laboratory (hereafter referred to as "the Laboratory") for the evaluation period from October 1, 2007, through September 30, 2008. The performance evaluation provides a standard by which to determine whether the Contractor is managerially and operationally in control of the Laboratory and is meeting the mission requirements and performance expectations/objectives of the Department as stipulated within this contract.

This document also describes the distribution of the total available performance-based fee and the methodology for determining the amount of fee earned by the Contractor as stipulated within the clauses entitled, "Performance and Other Available Fee", "Conditional Payment of Fee, Profit, or Incentives," and "Total Available Fee: Base Fee Amount and Performance Fee Amount." In partnership with the Contractor and key customers, the Department of Energy (DOE) Headquarters (HQ) and the Site Office have defined the measurement basis that serves as the Contractor's performance-based evaluation and fee determination.

The Performance Goals (hereafter referred to as Goals), Performance Objectives (hereafter referred to as Objectives) and set of Performance Measures and Targets (hereafter referred to as Performance Measures/Targets) for each Objective discussed herein were developed in accordance with contract expectations set forth within the contract. The Performance Measures for meeting the Objectives set forth within this plan have been developed in coordination with HQ program offices as appropriate. Except as otherwise provided for within the contract, the evaluation and fee determination will rest solely on the Contractor's performance within the Performance Goals and Objectives set forth within this plan.

The overall performance against each Objective of this performance plan, to include the evaluation of Performance Measures identified for each Objective, shall be evaluated jointly by the appropriate HQ office or major customer and the Site Office. This cooperative review methodology will ensure that the overall evaluation of the Contractor results in a consolidated DOE position taking into account specific Performance Measures as well as all additional information not otherwise identified via specific Performance Measures. The Site Office shall work closely with each HQ program office or major customer throughout the year in evaluating the Contractor's performance and will provide observations regarding programs and projects as well as other management and operation activities conducted by the Contractor throughout the year.

Section I provides information on how the performance rating (grade) for the Contractor, as well as how the performance-based incentives fee earned (if any) will be determined.

Section II provides the detailed information concerning each Goal, their corresponding Objectives, and Performance Measures of performance identified, along with the weightings assigned to each Goal and Objective and a table for calculating the final score for each Goal.

I. DETERMINING THE CONTRACTOR'S PERFORMANCE RATING, AND PERFORMANCE-BASED FEE

The available fee for FY 2008 is \$7,400,000. The FY 2008 Contractor performance grades for each Goal will be determined based on the weighted sum of the individual scores earned for each of the Objectives described within this document for Science and Technology and for Management and Operations. No overall rollup grade will be provided. The rollup of the performance of each Goal will then be utilized to determine the Contractor performance score for Science and Technology and Management and Operations (see Table A below). The total overall score derived for Science and Technology will be utilized to determine the amount of available fee that may be earned (see Table C). The overall score derived for Management and Operations will be utilized to determine the multiplier to be applied (see Table C) to the Science and Technology fee earned to determine the final amount of fee earned for FY 2008. Each Goal is composed of two or more weighted Objectives and each Objective has a set of Performance Measures, which are identified to assist the reviewer in determining the Contractor's overall performance in meeting that Objective. Each of the Performance Measures identifies significant activities, requirements, and/or milestones important to the success of the corresponding Objective and shall be utilized as the primary means of determining the Contractor's success in meeting the Objective. Although the Performance Measures are the primary means for determining performance, other performance information available to the evaluating office from other sources to include, but not limited to, the Contractor's self-evaluation report, operational awareness (daily oversight) activities; "For Cause" reviews (if any); other outside agency reviews (OIG, GAO, DCAA, etc.) may be utilized in determining the Contractor's overall success in meeting an Objective. The following describes the methodology for determining the Contractor's grade for each Goal:

Performance Evaluation Methodology:

The purpose of this section is to establish a methodology to develop scoring at the Objective Level. Each Objective within a Goal shall be assigned a numerical score, per Figure I-1 below, by the evaluating office. Each evaluation will measure the degree of effectiveness and performance of the Contractor in meeting the Objective and shall be based on the Contractor's success in meeting the set of Performance Measures identified for each Objective as well as other performance information available to the evaluating office from other sources as identified above. The set of Performance Measures identified for each Objective represent the set of significant indicators that if fully met, collectively places performance for the Objective in the "B+" grade range. For some targets, it serves the evaluator to provide additional grading details (for example at the A, C+, and D levels) and in those cases details have been included in the PEMP. However,

these should be considered as guidelines that do not restrict the evaluation from considering other factors that contribute to the evaluation.

Letter Grade	Numeric Grade	Definition
A+	4.3 – 4.1	Significantly exceeds expectations of performance as set within performance measures identified for each Objective or within other areas within the purview of the Objective. Areas of notable performance have or have the potential to significantly improve the overall mission of the Laboratory. No specific deficiency noted within the purview of the overall Objective being evaluated.
A	4.0 – 3.8	Notably exceeds expectations of performance as set within performance measures identified for each Objective or within other areas within the purview of the Objective. Areas of notable performance either have or have the potential to improve the overall mission of the Laboratory. Minor deficiencies noted are more than offset by the positive performance within the purview of the overall Objective being evaluated and have no potential to adversely impact the mission of the Laboratory.
A-	3.7 – 3.5	Meets expectations of performance as set within performance measures identified for each Objective with some notable areas of increased performance identified. Deficiencies noted are offset by the positive performance within the purview of the overall Objective being evaluated with little or no potential to adversely impact the mission of the Laboratory.
B+	3.4 – 3.1	Meets expectations of performance as set by the performance measures identified for each Objective with no notable areas of increased or diminished performance identified. Deficiencies identified are offset by positive performance and have little to no potential to adversely impact the mission of the Laboratory.
B	3.0 – 2.8	Most expectations of performance as set by the performance measures identified for each Objective are met and/or other minor deficiencies are identified. Performance measures or other minor deficiencies identified are offset by positive performance within the purview of the Objective and have little to no potential to adversely impact the mission of the Laboratory.
B-	2.7 – 2.5	One or two expectations of performance set by the performance measures are not met and/or other deficiencies are identified and although they may be offset by other positive performance, they may have the potential to negatively impact the Objective or overall Laboratory mission accomplishment.
C+	2.4 – 2.1	Some expectations of performance set by the performance measures are not met and/or other minor deficiencies are identified and although they may be offset by other positive performance, they may have the potential to negatively impact the Objective or overall Laboratory mission accomplishment.
C	2.0 – 1.8	A number of expectations as set by the performance measures are not met and/or a number of other deficiencies are identified and although they may be somewhat offset by other positive performance, they have the potential to negatively impact the Objective or overall Laboratory mission accomplishment.
C-	1.7 – 1.1	Most expectations as set by the performance measures are not met and/or other major deficiencies are identified which have or will

Letter Grade	Numeric Grade	Definition
		negatively impact the Objective or overall Laboratory mission accomplishment if not immediately corrected.
D	1.0 – 0.8	Most or all expectations as set by the performance measures are not met and/or other significant deficiencies are identified which have negatively impacted the Objective and/or overall Laboratory mission accomplishment.
F	0.7 – 0	All expectations as set by the performance measures are not met and/or other significant deficiencies are identified which have significantly impacted both the Objective and the accomplishment of the Laboratory mission.

Figure I-1. Letter Grade and Numerical Score Definitions

Calculating Individual Goal Scores and Letter Grades:

Each Objective is assigned the earned numerical score by the evaluating office as stated above. The Goal rating is then computed by multiplying the numerical score by the weight of each Objective within a Goal. These values are then added together to develop an overall score for each Goal. A set of tables is provided at the end of each Performance Goal section of this document to assist in the calculation of Objective scores to the Goal score. Utilizing Table A, below, the scores for each of the Science and Technology (S&T) Goals and Management and Operations (M&O) Goals are then multiplied by the weight assigned and these are summed to provide an overall score for each.

The raw score from each calculation shall be carried through to the next stage of the calculation process. The raw score for Science and Technology and Management and Operations will be rounded to the nearest tenth of a point for purposes of determining fee as indicated in Table C. A standard rounding convention of x.44 and less rounds down to the nearest tenth (here, x.4), while x.45 and greater rounds up to the nearest tenth (here, x.50).

S&T Performance Goal	Numerical Score	Letter Grade	Weight ¹	Weighted Score	Total Score
1.0 Mission Accomplishment			40%		
2.0 Construction and Operations of User Research Facilities and Equipment			36%		
3.0 Science and Technology Research Project/Program Management			24%		
Total Score					
M&O Performance Goal	Numerical Score	Letter Grade	Weight	Weighted Score	Total Score
4.0 Leadership and Stewardship of the Laboratory			25%		
5.0 Integrated Safety, Health, and Environmental Protection			20%		
6.0 Business Systems			20%		
7.0 Operating, Maintaining, and Renewing Facility and Infrastructure Portfolio			15%		
8.0 Integrated Safeguards and Security Management and Emergency Management Systems			20%		
Total Score					

Table A. FY 2008 Contractor Evaluation Score Calculation

Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F
Total Score	4.3-4.1	4.0-3.8	3.7-3.5	3.4-3.1	3.0-2.8	2.7-2.5	2.4-2.1	2.0-1.8	1.7-1.1	1.0-0.8	0.7-0

Table B. FY 2008 Contractor Letter Grade Scale

Determining the Amount of Performance-Based Fee Earned:

The percentage of the available performance-based fee that may be earned by the Contractor shall be determined based on the overall weighted score for the S&T Goals (see Table A. above) and then compared to Table C. below. The overall numerical score of the M&O Goals from Table A. above shall then be utilized to determine the final fee multiplier (see Table C.), which shall be utilized to determine the overall amount of performance-based fee earned for FY 2008 as calculated within Table D.

¹ Weightings for Goals 1, 2 and 3 are preliminary, based upon FY 2007 Budget Authority figures, and are provided here for informational purposes only. The final weights to be utilized for calculating weighted scores will be determined following the end of the performance period and will be based on actual Budget Authority for FY 2008.

Overall Weighted Score from Table A.	Percent S&T Fee Earned	M&O Fee Multiplier
4.3	100%	100%
4.2		
4.1		
4.0	97%	100%
3.9		
3.8		
3.7	94%	100%
3.6		
3.5		
3.4	91%	100%
3.3		
3.2		
3.1		
3.0	88%	95%
2.9		
2.8		
2.7	85%	90%
2.6		
2.5		
2.4	75%	85%
2.3		
2.2		
2.1		
2.0	50%	75%
1.9		
1.8		
1.7	0%	60%
1.6		
1.5		
1.4		
1.3		
1.2		
1.1		
1.0 to 0.8	0%	0%
0.7 to 0.0	0%	0%

Table C. - Performance-Based Fee Earned Scale

Overall Fee Determination	
Percent S&T Fee Earned from Table C.	
M&O Fee Multiplier from Table C.	X
Overall Earned Performance-Based Fee	

Table D. – Final Percentage of Performance-Based Fee Earned Determination

Earned Fee Calculation	
Available Fee	
Overall Earned Performance -Base Fee (Table D)	X
Earned Fee	

Table E. – Earned Fee Calculation

Adjustment to the Letter Grade and/or Performance-Based Fee Determination:

The lack of performance objectives and measures in this plan do not diminish the need to comply with minimum contractual requirements. Although the performance-based Goals and their corresponding Objectives shall be the primary means utilized in determining the Contractor's performance grade and/or amount of performance-based fee earned, the Contracting Officer may unilaterally adjust the rating and/or reduce the otherwise earned fee based on the Contractor's performance against all contract requirements as set forth in the Prime Contract. While reductions may be based on performance against any contract requirement, specific note should be made to contract clauses which address reduction of fee including, Standards of Contractor Performance Evaluation, DEAR 970.5215-1 – Total Available Fee: Base Fee Amount and Performance Fee Amount, and Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts. Data to support rating and/or fee adjustments may be derived from other sources to include, but not limited to, operational awareness (daily oversight) activities; "For Cause" reviews (if

any); other outside agency reviews (OIG, GAO, DCAA, etc.), and the annual 2-week review (if needed).

The adjustment of a grade and/or reduction of otherwise earned fee will be determined by the severity of the performance failure and consideration of mitigating factors. DEAR 970.5215-3 Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts is the mechanism used for reduction of fee as it relates to performance failures related to safeguarding of classified information and to adequate protection of environment, health and safety. Its guidance can also serve as an example for reduction of fee in other areas.

The final Contractor performance-based grades for each Goal and fee earned determination will be contained within a year-end report, documenting the results from the DOE review. The report will identify areas where performance improvement is necessary and, if required, provide the basis for any performance-based rating and/or fee adjustments made from the otherwise earned rating/fee based on Performance Goal achievements.

II. PERFORMANCE GOALS, OBJECTIVES & PERFORMANCE MEASURES

Background

The current performance-based management approach to oversight within DOE has established a new culture within the Department with emphasis on the customer-supplier partnership between DOE and the laboratory contractors. It has also placed a greater focus on mission performance, best business practices, cost management, and improved contractor accountability. Under the performance-based management system the DOE provides clear direction to the laboratories and develops annual performance plans (such as this one) to assess the contractors performance in meeting that direction in accordance with contract requirements. The DOE policy for implementing performance-based management includes the following guiding principles:

- Performance objectives are established in partnership with affected organizations and are directly aligned to the DOE strategic goals;
- Resource decisions and budget requests are tied to results; and
- Results are used for management information, establishing accountability, and driving long-term improvements.

The performance-based approach focuses the evaluation of the Contractor's performance against these Performance Goals. Progress against these Goals is measured through the use of a set of Objectives. The success of each Objective will be measured based on a set of Performance Measures, both objective and subjective, that are to focus primarily on end-results or impact and not on processes or activities. Measures provide specific evidence of performance, and collectively, they provide the body of evidence that indicates performance relative to the corresponding Objectives. On occasion however, it may be necessary to include a process/activity-oriented measure when there is a need for the Contractor to develop a system or process that does not currently exist but will be of

significant importance to the DOE and the Laboratory when completed or that lead to the desired outcome/result.

Performance Goals, Objectives, and Performance Measures

The following sections describe the Performance Goals, their supporting Objectives, and associated performance measures for FY 2008

III. Schedule

In order to clearly define the path forward, the following generic schedule is presented as a guide. BSA and DOE acknowledge that the nature of the processes involved demands flexibility in the schedules.

FY 2008 Performance Evaluation Schedule

October:

- October 1 - Site Office incorporates PEMP into the prime contract for the **Next Fiscal Year**.
- October 1 - BSA initiates the Self-Evaluation process for the **Completed Fiscal Year**.
- Third Week – BSA sends the Site Office its performance evaluation of the PEMP for the Third Period. Site Office conducts the Third Period performance status review for the **Completed Fiscal Year**.

November:

- November 15 - BSA submits its Annual Self-Evaluation Report to DOE for the **Completed Fiscal Year**.
- November 15 – SC HQ, AD and other customer input due to BHSO Manager for the **Completed Fiscal Year**.

December:

- BHSO sends draft Performance Appraisal Report to BSA for review.

January:

- First Week - Site Office Performance Evaluation Presentation for SC-1 due to SC Office of Laboratory Policy for the **Completed Fiscal Year**.
- Third Week - Annual SC Laboratory Appraisal Meetings and Presentations to SC-1 for the **Completed Fiscal Year**.
- Last Week - Site Office adjustments to evaluations finalized as necessary based on results of SC-1 presentation and SC-1 approvals issued for the **Completed Fiscal Year**.

February:

- DOE transmits the final DOE Annual Performance Appraisal Report for the **Completed Fiscal Year** to BSA.
- Third Week – BSA sends the Site Office its performance evaluation of the PEMP for the First Period. Site Office conducts the First Period performance status review for the **Current Fiscal Year**.

May:

- DOE and BSA begin drafting the Measures and Targets for the **Next Fiscal Year**.
- May 1 - SC Laboratory Performance Assessment Process - Fiscal Year Supplemental Guidance issued to Site Offices for the **Next Fiscal Year**.

June:

- Third Week – BSA sends the Site Office its performance evaluation of the PEMP for the Second Period. Site Office conducts mid-year performance status review with input from HQ Program Offices for the **Current Fiscal Year**.
- BHSO and BSA work on measures and targets, then compile the draft PEMP for the **Next Fiscal Year**.

July:

- Third Week – Site Office and BSA senior management meet on the PEMP's final draft for the **Next Fiscal Year**.

August:

- August 1 - BSA submits its final draft of the Measures/Targets to BHSO for the **Next Fiscal Year**.
- August 15 - BHSO sends its final draft to DOE/SC Office of Laboratory Policy.
- SC Program ADs and Site Office Managers meet to review PEMP for **Next Fiscal Year**.

September:

- Second Week – SC PEMP Review Board comments issued to the Site Office as needed & Site Office incorporates/disposes comments for the **Next Fiscal Year**.
- Third Week – SC PEMP Review Board Meeting to discuss final PEMP approval recommendations to SC-1 for the **Next Fiscal Year**.
- Third Week - Site Office issues a call for SC year-end evaluation input (due to Site Office by November 15) for the **Completed Fiscal Year**.
- Last Week - SC PEMP Review Board presents recommendations to SC-1 and receives SC-1 approval for the **Next Fiscal Year**.
- Last Week - SC-1 approval memo issued to the Site Offices for the **Next Fiscal Year**.
- September 30 - The Goals, Objectives, Measures and Targets for the **Next Fiscal Year** will be ready to be incorporated into DOE's Prime Contract with BSA.

1.0 Provide for Efficient and Effective Mission Accomplishment

The Contractor produces high-quality, original, and creative results that advance science and technology; demonstrates sustained scientific progress and impact; receives appropriate external recognition of accomplishments; and contributes to overall research and development goals of the Department and its customers.

The weight of this Goal is 40%.

The Provide for Efficient and Effective Mission Accomplishment Goal measures the overall effectiveness and performance of the Contractor in delivering science and technology results which contribute to and enhance the DOE's mission of protecting our national and economic security by providing world-class scientific research capacity and advancing scientific knowledge by supporting world-class, peer-reviewed scientific results, which are recognized by others.

Each Objective within this Goal is to be assigned the appropriate numerical score by the Office of Science Program Office as identified below. The overall Goal score from each Program Office is computed by multiplying numerical scores earned by the weight of each Objective, and summing them (see Table 1.1). Weightings for each office listed below are preliminary, based upon FY 2007 Budget Authority figures, and are provided here for informational purposes only. The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual Budget Authority for FY 2008.

- Office of Advanced Scientific Computing Research (ASCR) .3%
- Office of Basic Energy Sciences (BES) 28.0%
- Office of Biological and Environmental Research (BER) 6.8%
- Office of High Energy Physics (HEP) 12.7%
- Office of Nuclear Physics (NP) 48.2%
- Office of Workforce Development for Teachers and Scientists (WDTS) .2%
- Office of Defense Nuclear Nonproliferation (DNN) (1.6%)
- Department of Homeland Security (DHS) (1.0%)
- Assistant Secretary for Energy Efficiency and Renewable Energy (EERE) (1.3%)

The overall performance score and grade for this Goal will be determined by multiplying the overall score assigned by each of the offices identified above by the weightings identified for each and then summing them (see Table 1.4 below). The overall score earned is then compared to Table 1.5 to determine the overall letter grade for this Goal. The Contractor's success in meeting each Objective shall be determined based on the Contractor's performance as viewed by the Office of Science, other cognizant HQ Program Offices, and other customers for which the Laboratory conducts work.

1.1 Science and Technology Results Provide Meaningful Impact on the Field

In determining the performance of the Objective the DOE evaluator(s) shall consider the following as measured by progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.:

- The impact of publications on the field;
- Publication in journals outside the field indicating broad impact;
- Impact on DOE or other customer mission(s);
- Successful stewardship of mission-relevant research areas;
- Significant awards (R&D 100, FLC, Nobel Prizes, etc.);
- Invited talks, citations, making high-quality data available to the scientific community; and
- Development of tools and techniques that become standards or widely-used in the scientific community.

A	Changes the way the research community thinks about a particular field; to resolves critical questions and thus moves research areas forward; results
A+	generate huge interest/enthusiasm in the field.
B+	Impacts the community as expected. Strong peer review comments in all relevant areas.
B	Not strong peer review comments in at least one significant research area.
C	One research area just not working out. Peer review reveals that a program isn't going anywhere.
D	Failure of multiple program elements.
F	Gross scientific incompetence and/or scientific fraud.

1.2 Provide Quality Leadership in Science and Technology

In determining the performance of the Objective the DOE evaluator(s) shall consider the following as measured by progress reports, peer reviews, Program Office reviews/oversight, etc.:

- Willingness to pursue novel approaches and/or demonstration of innovative solutions to problems;
- Willingness to take on high-risk/high payoff/long-term research problems, evidence that the Contractor “guessed right” in that previous risky decisions proved to be correct and are paying off;
- The uniqueness and challenge of science pursued, recognition for doing the best work in the field;
- Extent of collaborative efforts, quality of the scientists attracted and maintained at the Laboratory;
- Staff members visible in leadership position in the scientific community; and

- Effectiveness in driving the direction and setting the priorities of the community in a research field.

A to A+	Laboratory staff lead Academy or equivalent panels; laboratory's work changes the direction of research fields; world-class scientists are attracted to the laboratory, lab is trend-setter in a field.
B⁺	Strong research performer in most areas; staff asked to speak to Academy or equivalent panels to discuss further research directions; lab is center for high-quality research and attracts full cadre of researchers; some aspects of programs are world-class.
B	Strong research performer in many areas; staff asked to speak to Academy or equivalent panels to discuss further research directions; few aspects of programs are world-class.
C	Working on problems no longer at the forefront of science; stale research; evolutionary, not revolutionary.
D	Failure of multiple program elements.
F	Gross scientific incompetence and/or scientific fraud.

1.3 Provide and sustain Outputs that Advance Program Objectives & Goals

In determining the performance of the Objective the DOE evaluator(s) shall consider the following as measures through defined project products, progress reports, statements of work, program management plans, Program Office and/or other reviews/oversight, etc.:

- The quantity and quality of program/project (e.g., technical reports, policy papers, prototype demonstrations, tasks, etc.) output(s) be it policy, R&D, or implementation programs;
- The number of publications in peer-reviewed journals; and
- Demonstrated progress against peer-reviewed recommendations, headquarters guidance, etc.

A to A+	Program offices, clients, end-users, independent experts and/or peers laud work results; output(s) exceeds the amount and/or quality typically expected for an excellent body of work.
B⁺	Program office, client, end-user, independent expert and/or peer reviews are universally positive; output(s) meet the amount and/or quality typically expected for the body of work; work demonstrates progress against review recommendations and/or headquarters guidance.
B	Program office, client, end-user, independent expert and/or peer reviews are largely positive, with only a few minor deficiencies and/or slightly negative responses noted; minor deficiencies and/or negative responses have little to no potential to adversely impact the overall program/project.
C	A number of outputs have not met the amount and/or quality typically

	expected for the body of work; program office, client, end-user, independent expert and/or peer reviews identify a number of deficiencies and although they may be somewhat offset by other positive performance, they have the potential to negatively impact the overall program/project if not corrected.
D	Most outputs have not met the amount and/or quality typically expected for the body of work; program office, client, end-user, independent expert and/or peer reviews identify significant deficiencies which have negatively impacted the overall program/project.
F	All outputs have not met the amount and/or quality typically expected for the body of work; program office, client, end-user, independent expert and/or peer reviews identify significant deficiencies which have significantly impacted and/or damaged the overall program/project.

1.4 Provide for Effective Delivery of Products

In determining the performance of the Objective the DOE evaluator(s) shall consider the following as measures through progress reports, peer-reviews; Field Work Proposals (FWPs), Program Office reviews/oversight, etc.:

- Efficiency and effectiveness in meeting goals/milestones documented within FWPs and/or other such documents;
- Efficiency and effectiveness in delivering on promises and/or getting instruments to work as promised; and
- Efficiency and effectiveness in transmitting results to the community and/or responding to DOE or other customer guidance.

A to A+	Program/project goals and/or milestones are met well ahead of schedule and/or well under budget; program/project and/or mission objective(s) are fully meet and results anticipate HQ guidance.
B⁺	Program/project goals and/or milestones are primarily met on schedule and within budget; program/project and/or mission objective(s) are fully meet and are fully responsive to HQ guidance.
B	Most program/project goals and/or milestones are met on schedule and within budget; overall program/project and/or mission objective(s) are meet; minor delays, overruns, and/or deficiencies are minimized and/or have little to no adverse impact the overall program/project.
C	A number of and/or key program/project goals and/or milestones are not met within the scheduled timeframe(s) (e.g less than 6 months behind) and/or within the agreed upon budget (e.g., less than 15% over); overall program/project and/or mission objective(s) have not been met or have the potential to be missed; delays, overruns, and/or deficiencies are identified which have the potential to adversely impact the overall program/project is not corrected.
D	Most of and/or key program/project goals and/or milestones are not met within the scheduled timeframe(s) (e.g., more than 6 months behind) and/or

	<p>within the agreed upon budget (e.g., less than 25% over); overall program/project and/or mission objective(s) have not been met or have the potential to be missed; sizeable delays, overruns, and/or deficiencies are identified which have negatively impacted the overall program/project.</p>
F	<p>All and/or key program/project goals and/or milestones are not met within the scheduled timeframe(s) (e.g., more than 9 months behind) and/or within the agreed upon budget (e.g., greater than 25% over); overall program/project and/or mission objective(s) have not been met; significant delays, overruns, and/or deficiencies are identified which have negatively impacted the overall program/project.</p>

Science Program Office²	Letter Grade	Numerical Score	Weight	Weighted Score	Overall Score
Office of Advanced Scientific Computing Research					
1.1 Impact			40%		
1.2 Leadership			30%		
1.3 Output			15%		
1.4 Delivery			15%		
Overall ASCR Total					
Office of Basic Energy Sciences					
1.1 Impact			50%		
1.2 Leadership			20%		
1.3 Output			15%		
1.4 Delivery			15%		
Overall BES Total					
Office of Biological and Environmental Research					
1.1 Impact			30%		
1.2 Leadership			20%		
1.3 Output			20%		
1.4 Delivery			30%		
Overall BER Total					
Office of High Energy Physics					
1.1 Impact			30%		
1.2 Leadership			30%		
1.3 Output			30%		
1.4 Delivery			10%		
Overall HEP Total					
Office of Nuclear Physics					
1.1 Impact			35%		
1.2 Leadership			25%		
1.3 Output			25%		
1.4 Delivery			15%		
Overall NP Total					
Office of Workforce Development for Teachers and Scientists					
1.1 Impact			25%		
1.2 Leadership			30%		
1.3 Output			30%		
1.4 Delivery			15%		
Overall WDTS Total					

Table 1.1 – 1.0 SC Program Office Performance Goal Score Development

² A complete listing of the S&T Goals & Objectives weightings for the SC Programs is provided within Attachment I to this plan.

Science Program Office	Letter Grade	Numerical Score	Funding Weight (BA)	Weighted Score	Overall Weighted Score
Office of Advanced Scientific Computing Research			.3%		
Office of Basic Energy Sciences			28.0%		
Office of Biological and Environmental Research			6.8%		
Office of High Energy Physics			12.7%		
Office of Nuclear Physics			48.2%		
Office of Workforce Development for Teachers and Scientists			.2%		
Performance Goal 1.0 Total					

Table 1.2 – SC Program Office Overall Performance Goal Score Development³

HQ Program Office ⁴	Letter Grade	Numerical Score	Weight	Weighted Score	Overall Score
Office of Defense Nuclear Nonproliferation					
1.1 Impact			25%		
1.2 Leadership			25%		
1.3 Output			25%		
1.4 Delivery			25%		
Overall DNN Total					
Department of Homeland Security					
1.1 Impact			25%		
1.2 Leadership			25%		
1.3 Output			25%		
1.4 Delivery			25%		
Overall DHS Total					
Assistant Secretary for Energy Efficiency and Renewable Energy					
1.1 Impact			25%		
1.2 Leadership			25%		
1.3 Output			25%		
1.4 Delivery			25%		
Overall EERE Total					

Table 1.3 – 1.0 Other Program Office & Customer Performance Goal Score Development

³ Weightings for each Customer listed within Table 1.2 are preliminary, based upon FY 2007 Budget Authority figures, and are provided for informational purposes only. The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual Budget Authority for FY 2008.

⁴ A complete listing of the S&T Goals & Objectives weightings for the other Programs and other customers is provided within Attachment I to this plan.

HQ Program Office	Letter Grade	Numerical Score	Funding Weight (BA)	Weighted Score	Overall Weighted Score
Office of Science			96.1%		
Office of Defense Nuclear Nonproliferation			1.6%		
Department of Homeland Security			1.0%		
Office of Energy Efficiency and Renewable Energy			1.3%		
Performance Goal 1.0 Total					

Table 1.4 – Overall Performance Goal Score Development⁵

Total Score	4.3-4.1	4.0-3.8	3.7-3.5	3.4-3.1	3.0-2.8	2.7-2.5	2.4-2.1	2.0-1.8	1.7-1.1	1.0-0.8	0.7-0
Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F

Table 1.5 – 1.0 Goal Final Letter Grade

⁵ Weightings for each Customer listed within Table 1.2 are preliminary, based upon FY 2007 Budget Authority figures, and are provided for informational purposes only. The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual Budget Authority for FY 2008.

2.0 Provide for Efficient and Effective Design, Fabrication, Construction and Operations of Research Facilities

The Contractor provides effective and efficient strategic planning; fabrication, construction and/or operations of Laboratory research facilities; and are responsive to the user community.

The weight of this Goal is 36%.

The Provide for Efficient and Effective Design, Fabrication, Construction and Operations of Research Facilities Goal shall measure the overall effectiveness and performance of the Contractor in planning for and delivering leading-edge specialty research and/or user facilities to ensure the required capabilities are present to meet today's and tomorrow's complex challenges. It also measures the Contractor's innovative operational and programmatic means for implementation of systems that ensures the availability, reliability, and efficiency of these facilities; and the appropriate balance between R&D and user support.

Each Objective within this Goal is to be assigned the appropriate numerical score by the Office of Science as identified below. The overall Goal score from each SC Program Office is computed by multiplying numerical scores earned by the weight of each Objective, and summing them (see Tables 2.1, & 2.2). Final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual Budget Authority for FY 2008.

- Office of Advanced Scientific Computing Research (ASCR) .3%
- Office of Basic Energy Sciences (BES) 29.1%
- Office of Biological and Environmental Research (BER) 7.0%
- Office of High Energy Physics (HEP) 13.2%
- Office of Nuclear Physics (NP) 50.2%
- Office of Workforce Development for Teachers and Scientists (WDTS) .2%

The overall performance score and grade for this Goal will be determined by multiplying the overall score assigned to each of the objectives by the weightings identified for each and then summing them (see Table 2.2 below). The overall score earned is then compared to Table 2.3 to determine the overall letter grade for this Goal. The Contractor's success in meeting each Objective shall be determined based on the Contractor's performance as viewed by SC.

Objectives:

2.1 Provide Effective Facility Design(s) as Required to Support Laboratory Programs (i.e., activities leading up to CD-2)

In determining the performance of the Objective the DOE evaluator(s) shall consider the following as measured by scientific/technical workshops developing pre-

conceptual R&D, progress reports, Lehman reviews, Program/Staff Office reviews/oversight, etc.:

- Effectiveness of planning of preconceptual R&D and design for life-cycle efficiency;
- Leverage of existing facilities at the site;
- Delivery of accurate and timely information needed to carry out the critical decision and budget formulation process.; and
- Ability to meet the intent of DOE Order 413.3, Program and Project Management for the Acquisition of Capital Assets.

A to A+	In addition to meeting all measures under B ⁺ , the laboratory is recognized by the research community as the leader for making the science case for the acquisition; Takes the initiative to demonstrate the potential for revolutionary scientific advancement. Identifies, analyzes and champions novel approaches for acquiring the new capability, including leveraging or extending the capability of existing facilities and financing. Proposed approaches are widely regarded as innovative, novel, comprehensive, and potentially cost-effective. Reviews repeatedly confirm potential for scientific discovery in areas that support the Department's mission, and potential to change a discipline or research area's direction.
B+	Provides the overall vision for the acquisition. Displays leadership and commitment to achieving the vision within preliminary estimates that are defensible and credible in terms of cost, schedule and performance; develops quality analyses, preliminary designs, and related documentation to support the approval of the mission need (CD-0), the alternative selection and cost range (CD-1) and the performance baseline (CD-2). Solves problems and addresses issues. Keeps DOE appraised of the status, near-term plans and the resolution of problems on a regular basis. Anticipates emerging issues that could impact plans and takes the initiative to inform DOE of possible consequences.
B	Fails to meet expectations in one of the areas listed under B+.
C	The laboratory team develops the required analyses and documentation in a timely manner. However, inputs are mundane and lack innovation and commitment to the vision of the acquisition.
D	The potential exists for credible science and business cases to be made for the acquisition, but the laboratory fails to take advantage of the opportunity.
F	Proposed approaches are based on fraudulent assumptions; the science case is weak to non-existent, the business case is seriously flawed.

2.2 Provide for the Effective and Efficient Construction of Facilities and/or Fabrication of Components (execution phase, Post CD-2 to CD-4)

In determining the performance of the Objective the DOE evaluator(s) shall consider the following as measured by progress reports, Lehman reviews, Program/Staff Office reviews/oversight, etc.:

- Adherence to DOE Order 413.3 Project Management for the Acquisition of Capital Assets;
- Successful fabrication of facility components
- Effectiveness in meeting construction schedule and budget; and
- Quality of key staff overseeing the project(s).

A to A+	Laboratory has identified and implemented practices that would allow the project scope to be increased if such were desirable, without impact on baseline cost or schedule; Laboratory always provides exemplary project status reports on time to DOE and takes the initiative to communicate emerging problems or issues. There is high confidence throughout the execution phase that the project will meet its cost/schedule performance baseline; Reviews identify environment, safety and health practices to be exemplary.
B+	The project meets CD-2 performance measures; the laboratory provides sustained leadership and commitment to environment, safety and health; reviews regularly recognize the laboratory for being proactive in the management of the execution phase of the project; to a large extent, problems are identified and corrected by the laboratory with little, or no impact on scope, cost or schedule; DOE is kept informed of project status on a regular basis; reviews regularly indicate project is expected to meet its cost/schedule performance baseline.
B	The project fails to meet expectations in one of the areas listed under B+.
C	Reviews indicate project remains at risk of breaching its cost/schedule performance baseline; Laboratory commitment to environment, safety and health issues is adequate; Reports to DOE can vary in degree of completeness; Laboratory commitment to the project appears to be subsiding.
D	Reviews indicate project is likely to breach its cost/schedule performance baseline; and/or Laboratory commitment to environment, safety and health issues is inadequate; reports to DOE are largely incomplete; laboratory commitment to the project has subsided.
F	Laboratory falsifies data during project execution phase; shows disdain for executing the project within minimal standards for environment, safety or health, fails to keep DOE informed of project status; reviews regularly indicate that the project is expected to breach its cost/schedule performance baseline.

2.3 Provide Efficient and Effective Operation of Facilities

In determining the performance of the Objective the DOE evaluator(s) shall consider the following as measured by progress reports, peer reviews, Program/Staff Office reviews/oversight, performance against benchmarks, Approved Financial Plans (AFPs), etc.:

- Availability, reliability, and efficiency of facility(ies);
- Degree the facility is optimally arranged to support community;
- Whether R&D is conducted to develop/expand the capabilities of the facility(ies);
- Effectiveness in balancing resources between facility R&D and user support; and
- Quality of the process used to allocate facility time to users.

A to A+	Performance of the facility exceeds expectations as defined before the start of the year in any of these categories: cost of operations, users served, availability, beam delivery, or luminosity and this performance can be directly attributed to the efforts of the laboratory; and /or: the schedule and the costs associated with the ramp-up to steady state operations are less than planned and are acknowledged to be 'leadership caliber' by reviews; Data on ES&H continues to be exemplary and widely regarded as among the 'best in class'.
B+	Performance of the facility meets expectations as defined before the start of the year in all of these categories: cost of operations, users served, availability, and this performance can be directly attributed to the efforts of the laboratory; and /or: the schedule and the costs associated with the ramp-up to steady state operations occur as planned; Data on ES&H continues to be very good as compared with other projects in the DOE.
B	The project fails to meet expectations in one of the areas listed under B+.
C	Performance of the facility fails to meet expectations in several of the areas listed under B+; for example, the cost of operations is unexpectedly high and availability of the facility is unexpectedly low, the number of users is unexpectedly low, beam delivery or luminosity is well below expectations, facility operates at steady state, on cost and on schedule, but the reliability of performance is somewhat below planned values, <u>or</u> acquisition operates at steady state, but the associated schedule and costs exceed planned values. Commitment to ES&H is satisfactory.
D	Performance of the facility fails to meet expectations in many of the areas listed under B+; for example, the cost of operations is unexpectedly high and availability of the facility is unexpectedly low. Acquisition operates somewhat below steady state, on cost and on schedule, and the reliability performance is somewhat below planned values, <u>or</u> acquisition operates at steady state, but the schedule and costs associated exceed planned values. Commitment to ES&H is satisfactory.
F	The facility fails to operate; acquisition operates well below steady state and/or the reliability of the performance is well below planned values.

2.4 Utilization of Facility to Grow and Support Lab's Research Base and External User Community

In determining the performance of the Objective the DOE evaluator(s) shall consider the following as measured by peer reviews, participation in international design teams, Program/Staff Office reviews/oversight, etc.:

- The facility is being used to perform influential science;
- Contractor's efforts to take full advantage of the facility to strengthen the Laboratory's research base;
- Conversely the facility is strengthened by a resident research community that pushes the envelope of what the facility can do and/or are among the scientific leaders of the community;
- Contractor's ability to appropriately balance access by internal and external user communities; and
- There is a healthy program of outreach to the scientific community.

A to A+	Reviews document that multiple disciplines are using the facility in new and novel ways, that the facility is being used to pursue influential science, that full advantage has been taken of the facility to enhance external user access, and strengthen the laboratory's research base. A healthy outreach program is in place.
B⁺	Reviews state strong and effective approach exists toward establishing a large external and internal user community; that the facility is being used for influential science; the laboratory is capitalizing on existence of facility to grow internal scientific capabilities. A healthy outreach program is in place.
B	Reviews state that lab is establishing an external and internal user community, but laboratory is still not capitalizing fully on existence of the facility to grow internal capabilities and/or reach out to external users.
C	Reviews state that the laboratory has made satisfactory use of the facility, but has not demonstrated much innovation.
D	Few facility users, with none using it in novel ways; research base is very thin.
F	Laboratory does not know how to operate/use its own facility adequately.

Science Program Office⁶	Letter Grade	Numerical Score	Weight	Weighted Score	Overall Score
Office of Advanced Scientific Computing Research					
2.1 Design of Facility			0%		
2.2 Construction of Facility/Fabrication of Components			0%		
2.3 Operation of Facility			0%		
2.4 Utilization of Facility			0%		
Overall ASCR Total					
Office of Basic Energy Sciences					
2.1 Design of Facility			30%		
2.2 Construction of Facility/Fabrication of Components			20%		
2.3 Operation of Facility			40%		
2.4 Utilization of Facility			10%		
Overall BES Total					
Office of Biological and Environmental Research					
2.1 Design of Facility			0%		
2.2 Construction of Facility/Fabrication of Components			0%		
2.3 Operation of Facility			90%		
2.4 Utilization of Facility			10%		
Overall BER Total					
Office of High Energy Physics					
2.1 Design of Facility			50%		
2.2 Construction of Facility/Fabrication of Components			50%		
2.3 Operation of Facility			0%		
2.4 Utilization of Facility			0%		
Overall HEP Total					
Office of Nuclear Physics					
2.1 Design of Facility			0%		
2.2 Construction of Facility/Fabrication of Components			0%		
2.3 Operation of Facility			85%		
2.4 Utilization of Facility			15%		
Overall NP Total					
Office of Workforce Development for Teachers and Scientists					
2.1 Design of Facility			0%		
2.2 Construction of Facility/Fabrication of Components			0%		
2.3 Operation of Facility			0%		

⁶ A complete listing of the S&T Goals & Objectives weightings for the SC Programs is provided within Attachment I to this plan.

2.4 Utilization of Facility			%		
Overall WDTS Total					

Table 2.1 – 2.0 SC Program Office Performance Goal Score Development

Science Program Office	Letter Grade	Numerical Score	Funding Weight (BA)	Weighted Score	Overall Weighted Score
Office of Advanced Scientific Computing Research			.3%		
Office of Basic Energy Sciences			29.1%		
Office of Biological and Environmental Research			7.0%		
Office of High Energy Physics			13.2%		
Office of Nuclear Physics			50.2%		
Office of Workforce Development for Teachers and Scientists			.2%		
Performance Goal 2.0 Total					

Table 2.2 – SC Program Office Overall Performance Goal Score Development

Total Score	4.3-4.1	4.0-3.8	3.7-3.5	3.4-3.1	3.0-2.8	2.7-2.5	2.4-2.1	2.0-1.8	1.7-1.1	1.0-0.8	0.7-0
Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F

Table 2.3 – 2.0 Goal Final Letter Grade

⁷ Weightings for each Customer listed within Table 2.2 are preliminary, based upon FY 2007 Budget Authority figures, and are provided for informational purposes only. The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual Budget Authority for FY 2008.

3.0 Provide Effective and Efficient Science and Technology Program Management

The Contractor provides effective program vision and leadership; strategic planning and development of initiatives; recruits and retains a quality scientific workforce; and provides outstanding research processes, which improve research productivity.

The weight of this Goal is 24%.

The Provide Effective and Efficient Science and Technology Program Management Goal shall measure the Contractor's overall management in executing S&T programs. Dimensions of program management covered include: 1) providing key competencies to support research programs to include key staffing requirements; 2) providing quality research plans that take into account technical risks, identify actions to mitigate risks; and 3) maintaining effective communications with customers to include providing quality responses to customer needs.

Each Objective within this Goal is to be assigned the appropriate numerical score by the Office of Science Program Office as identified below. The overall Goal score from each Program Office is computed by multiplying numerical scores earned by the weight of each Objective, and summing them (see Table 3.1). Weightings for each office listed below are preliminary, based upon FY 2007 Budget Authority figures, and are provided here for informational purposes only. The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual Budget Authority for FY 2008.

- Office of Advanced Scientific Computing Research (ASCR) .3%
- Office of Basic Energy Sciences (BES) 28.0%
- Office of Biological and Environmental Research (BER) 6.8%
- Office of High Energy Physics (HEP) 12.7%
- Office of Nuclear Physics (NP) 48.2%
- Office of Workforce Development for Teachers and Scientists (WDTS) .2%
- Office of Defense Nuclear Nonproliferation (DNN) (1.6%)
- Department of Homeland Security (DHS) (1.0%)
- Assistant Secretary for Energy Efficiency and Renewable Energy (EERE) (1.3%)

The overall performance score and grade for this Goal will be determined by multiplying the overall score assigned by each of the offices identified above by the weightings identified for each and then summing them (see Table 3.4 below). The overall score earned is then compared to Table 3.5 to determine the overall letter grade for this Goal. The Contractor's success in meeting each Objective shall be determined based on the Contractor's performance as viewed by the Office of Science, other cognizant HQ Program Offices, and other customers for which the Laboratory conducts work.

Objectives:

3.1 Provide Effective and Efficient Stewardship of Scientific Capabilities and Program Vision

In determining the performance of the Objective the DOE evaluator(s) shall consider the following as measured by peer reviews, existence and quality of strategic plans as determined by SC and scientific community review, Program Office reviews/oversight, etc.:

- Efficiency and Effectiveness of joint planning (e.g., workshops) with outside community;
- Articulation of scientific vision;
- Development of core competencies, ideas for new facilities and research programs; and
- Ability to attract and retain highly qualified staff.

A to A+	Providing strong programmatic vision that extends past the laboratory and for which the lab is a recognized leader within SC and in the broader research communities; development and maintenance of outstanding core competencies, including achieving superior scientific excellence in both exploratory, high-risk research and research that is vital to the DOE/SC missions; attraction and retention of world-leading scientists; recognition within the community as a world leader in the field.
B+	Coherent programmatic vision within the laboratory with input from and output to external research communities; development and maintenance of strong core competencies that are cognizant of the need for both high-risk research and stewardship for mission-critical research; attracting and retaining scientific staff who are very talented in all programs.
B	Programmatic vision that is only partially coherent and not entirely well connected with external communities; development and maintenance of some, but not all core competencies with attention to, but not always the correct balance between, high-risk and mission-critical research; attraction and retention of scientific staff who talented in most programs.
C	Failure to achieve a coherent programmatic vision with little or no connection with external communities; partial development and maintenance of core competencies (i.e., some are neglected) with imbalance between high-risk and mission-critical research; attracting only mediocre scientists while losing the most talented ones.
D	Minimal attempt to achieve programmatic vision; little ability to develop any core competencies with a complete lack of high-risk research and ignorance of mission-critical areas; minimal success in attracting even reasonably talented scientists.
F	No attempt made to achieve programmatic vision; no demonstrated ability to develop any core competencies with a complete lack of high-risk research and ignorance of mission-critical areas; failure to attract even reasonably talented scientists.

3.2 Provide Effective and Efficient Science and Technology Project/Program Planning and Management

In determining the performance of the Objective the DOE evaluator(s) shall consider the following as measured by peer reviews, existence and quality of strategic plans as determined by SC and scientific community review, Program Office and scientific community review/oversight, etc.:

- Quality of R&D and/or user facility strategic plans
- Adequacy in considering technical risks;
- Success in identifying/avoiding technical problems;
- Effectiveness in leveraging (synergy with) other areas of research; and
- Demonstration of willingness to make tough decisions (i.e., cut programs with sub-critical mass of expertise, divert resources to more promising areas, etc.).

A to A+	Research plans are proactive, not reactive, as evidenced by making hard decisions and taking strong actions; plans are robust against budget fluctuations – multiple contingencies planned for; new initiatives are proposed and funded through reallocation of resources from less effective programs; plans are updated regularly to reflect changing scientific and fiscal conditions; plans include ways to reduce risk, duration of programs.
B⁺	Plans are reviewed by experts outside of lab management and/or include broadly-based input from within the laboratory; research plans exist for all program areas; plans are consistent with known budgets and well-aligned with DOE interests; work follows the plan.
B	Research plans exist for all program areas; work follows the plan.
C	Research plans exist for most program areas; work does not always follow the plan.
D	Plans do not exist for a significant fraction of the lab’s program areas, or significant work is conducted outside those plans.
F	No planning is done.

3.3 Provide Efficient and Effective Communications and Responsiveness to Customer Needs

In determining the performance of the Objective the DOE evaluator(s) shall consider the following as measured by Program Office reviews/oversight, etc.:

- The quality, accuracy and timeliness of response to customer requests for information;
- The extent to which the Contractor keeps the customer informed of both positive and negative events at the Laboratory so that the customer can deal effectively with both internal and external constituencies; and
- The ease of determining the appropriate contact (who is on-point for what).

<p>A to A+</p>	<p>Communication channels are well-defined and information is effectively conveyed; important or critical information is delivered in real-time; responses to HQ requests for information from laboratory representatives are prompt, thorough, correct and succinct; laboratory representatives <i>always</i> initiate a communication with HQ on emerging issues there are no surprises.</p>
<p>B⁺</p>	<p>Good communication is valued by all staff throughout the contractor organization; responses to requests for information are thorough and are provided in a timely manner; the integrity of the information provided is never in doubt</p>
<p>B</p>	<p>Evidence of good communications is noted throughout the contractor organization and responses to requests for information provide the minimum requirements to meet HQ needs; with the exception of a few minor instances HQ is alerted to emerging issues.</p>
<p>C</p>	<p>Laboratory representatives recognize the value of sound communication with HQ to the mission of the laboratory. However, laboratory management fails to demonstrate that its employees are held accountable for ensuring effective communication and responsiveness; laboratory representatives do not take the initiative to alert HQ to emerging issues.</p>
<p>D</p>	<p>Communications from the laboratory are well-intentioned but generally incompetent; the laboratory management does not understand the importance of effective communication and responsiveness to the mission of the laboratory.</p>
<p>F</p>	<p>Contractor representatives are openly hostile and/or non-responsive – emails and phone calls are consistently ignored; communications typically do not address the request; information provided can be incorrect, inaccurate or fraudulent – information is not organized, is incomplete, or is fabricated.</p>

Science Program Office⁸	Letter Grade	Numerical Score	Weight	Weighted Score	Overall Score
Office of Advanced Scientific Computing Research					
3.1 Effective and Efficient Stewardship			30%		
3.2 Project/Program Planning and Management			40%		
3.3 Communications and Responsiveness			30%		
Overall ASCR Total					
Office of Basic Energy Sciences					
3.1 Effective and Efficient Stewardship			40%		
3.2 Project/Program Planning and Management			30%		
3.3 Communications and Responsiveness			30%		
Overall BER Total					
Office of Biological and Environmental Research					
3.1 Effective and Efficient Stewardship			20%		
3.2 Project/Program Planning and Management			30%		
3.3 Communications and Responsiveness			50%		
Overall BES Total					
Office of High Energy Physics					
3.1 Effective and Efficient Stewardship			40%		
3.2 Project/Program Planning and Management			40%		
3.3 Communications and Responsiveness			20%		
Overall HEP Total					
Office of Nuclear Physics					
3.1 Effective and Efficient Stewardship			40%		
3.2 Project/Program Planning and Management			40%		
3.3 Communications and Responsiveness			20%		
Overall NP Total					
Office of Workforce Development for Teachers and Scientists					
3.1 Effective and Efficient Stewardship			20%		
3.2 Project/Program Planning and Management			40%		
3.3 Communications and Responsiveness			40%		
Overall WDTS Total					

Table 3.1 – 3.0 SC Program Office Performance Goal Score Development

⁸ A complete listing of the S&T Goals & Objectives weightings for the SC Programs is provided within Attachment I to this plan.

Science Program Office	Letter Grade	Numerical Score	Funding Weight (BA)	Weighted Score	Overall Weighted Score
Office of Advanced Scientific Computing Research			.3%		
Office of Basic Energy Sciences			28.0%		
Office of Biological and Environmental Research			6.8%		
Office of High Energy Physics			12.7%		
Office of Nuclear Physics			48.2%		
Office of Workforce Development for Teachers and Scientists			.2%		
Performance Goal 3.0 Total					

Table 3.2 – SC Program Office Overall Performance Goal Score Development⁹

HQ Program Office ¹⁰	Letter Grade	Numerical Score	Weight	Weighted Score	Overall Score
Office of Defense Nuclear Nonproliferation					
3.1 Effective and Efficient Stewardship			34%		
3.2 Project/Program Planning and Management			33%		
3.3 Communications and Responsiveness			33%		
Overall DNN Total					
Department of Homeland Security					
3.1 Effective and Efficient Stewardship			34%		
3.2 Project/Program Planning and Management			33%		
3.3 Communications and Responsiveness			33%		
Overall DHS Total					
Assistant Secretary for Energy Efficiency and Renewable Energy					
3.1 Effective and Efficient Stewardship			34%		
3.2 Project/Program Planning and Management			33%		
3.3 Communications and Responsiveness			33%		
Overall EERE Total					

Table 3.3 – 3.0 Other Program Office & Customer Performance Goal Score Development

⁹ Weightings for each Customer listed within Table 3.1 and Table 3.2 are preliminary, based upon FY 2007 Budget Authority figures, and are provided for informational purposes only. Final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual Budget Authority for FY 2008.

¹⁰ A complete listing of the S&T Goals & Objectives weightings for the other Programs and other customers is provided within Attachment I to this plan.

HQ Program Office	Letter Grade	Numerical Score	Funding Weight (BA)	Weighted Score	Overall Weighted Score
Office of Science			96.1%		
Office of Defense Nuclear Nonproliferation			1.6%		
Department of Homeland Security			1.0%		
Office of Energy Efficiency and Renewable Energy			1.3%		
Performance Goal 3.0 Total					

Table 3.4 – Overall Performance Goal Score Development¹¹

Total Score	4.3-4.1	4.0-3.8	3.7-3.5	3.4-3.1	3.0-2.8	2.7-2.5	2.4-2.1	2.0-1.8	1.7-1.1	1.0-0.8	0.7-0
Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F

Table 3.5 – 3.0 Goal Final Letter Grade

¹¹ Weightings for each Customer listed within Table 3.2 are preliminary, based upon FY 2007 Budget Authority figures, and are provided for informational purposes only. The final weights to be utilized for determining weighted scores will be determined following the end of the performance period and will be based on actual Budget Authority for FY 2008.

Attachment I

Program Office Goal & Objective Weightings

Office of Science

		ASCR	BES	BER	HEP	NP	WDS
		Weight	Weight	Weight	Weight	Weight	Weight
Goal #1 Mission Accomplishment							
	Goal's weight	80%	30%	50%	40%	40%	65%
1.1 Impact (significance)		40%	50%	30%	30%	35%	25%
1.2 Leadership (recognition of S&T accomplishments)		30%	20%	20%	30%	25%	30%
1.3 Output (productivity)		15%	15%	20%	30%	25%	30%
1.4 Delivery		15%	15%	30%	10%	15%	15%
Goal #2 Design, Fabrication, Construction and Operation of Facilities							
	Goal's weight	0%	50%	25%	30%	40%	0%
2.1 Design of Facility (the initiation phase and the definition phase, i.e. activities leading up to CD-2)			30%	0%	50%	0%	
2.2 Construction of Facility/Fabrication of Components (execution phase, Post CD-2 to CD-4)			20%	0%	50%	0%	
2.3 Operation of Facility			40%	90%	0%	85%	
2.4 Utilization of Facility to Grow and Support Lab's Research Base and External			10%	10%	0%	15%	
Goal #3 Program Management							
	Goal's weight	20%	20%	25%	30%	20%	35%
3.1 Stewardship of Scientific Capabilities and Programmatic Vision		30%	40%	20%	40%	40%	20%
3.2 Program Planning and Management		40%	30%	30%	40%	40%	40%
3.3 Program Management-Communication & Responsiveness (to HQ)		30%	30%	50%	20%	20%	40%

Attachment I

Program Office Goal & Objective Weightings

All Other Customers

	DNN	DHS	EERE
	Weight	Weight	Weight
Goal 1.0 Mission Accomplishment¹²			
Goal's weight	50%	30%	50%
1.1 Impact (significance)	25%	25%	25%
1.2 Leadership (recognition of S&T accomplishments)	25%	25%	25%
1.3 Output (productivity) (pass/fail)	25%	25%	25%
1.4 Delivery (pass/fail)	25%	25%	25%
Goal 2.0 Design, Fabrication, Construction and Operation of Facilities			
Goal's weight	0%	0%	0%
2.1 Design of Facility (the initiation phase and the definition phase, i.e. activities leading up to CD-2)	0%	0%	0%
2.2 Construction of Facility/Fabrication of Components (execution phase, Post CD-2 to CD-4)	0%	0%	0%
2.3 Operation of Facility	0%	0%	0%
2.4 Utilization of Facility to Grow and Support Lab's Research Base and External User Community	0%	0%	0%
Goal 3.0 Program Management			
Goal's weight	50%	70%	50%
3.1 Stewardship of Scientific Capabilities and Programmatic Vision	34%	34%	34%
3.2 Program Planning and Management	33%	33%	33%
3.3 Program Management-Communication & Responsiveness (to HQ)	33%	33%	33%

¹² The Goal and Objective weights are based on previous discussions with the Other Customers.

Goal 4.0 Provide Sound and Competent Leadership and Stewardship of the Laboratory

The Contractor's leadership provides effective and efficient direction in strategic planning to meet the mission and vision of the overall laboratory; is accountable and responsive to specific issues and needs when required; and corporate office leadership provides appropriate levels of resources and support for the overall success of the laboratory.

The weight of this Goal is 25%.

Objective 4.1 - Provide a Distinctive Vision for the Laboratory and an Effective Plan for Accomplishment of the Vision to Include Strong Partnerships Required to Carry Out those Plans.

The weight of this Objective is 30%.

Measure 4.1.1

BSA will deliver and implement an effective integrated strategy to sustain the viability of BNL as a leading scientific institution into the foreseeable future.

Target 4.1.1.1

BSA will demonstrate that it is managing to the strategic agenda of the laboratory through management actions and plans (e.g., Strategic Research Partnerships, Annual Laboratory Plan, Organizational Unit Business Plans).

Target 4.1.1.2

BSA will maintain effective communication with the Laboratory's many communities about the mission of the Office of Science, the Laboratory's scientific and technological achievements, and the priority initiatives as articulated in the Strategic Plan.

Measure 4.1.2

Develop a baseline for understanding and trending the cost of doing business.

Target 4.1.2.1

Identify and bin major laboratory costs identifying direct and indirect labor FTEs and costs as well as various operating costs, such as utilities, by December 31, 2007. The cost structure and associated baseline cost of doing business is sufficiently detailed (i.e., including all funding and costs, both direct and indirect with associated FTEs) so the laboratory and site office have a common understanding of how the money is spent and the various cost drivers that effect the laboratory's cost of doing business.

Objective 4.2 – Provide for Responsive and Accountable Leadership throughout the Organization.

The weight of this Objective is 40%.

Measure 4.2.1

Corporate Leadership - BSA is responsible and accountable for Laboratory performance.

Target 4.2.1.1

BSA's laboratory management team demonstrates effective stewardship and accountability of Laboratory assets, operations, systems, and managers.

Target 4.2.1.2

The Laboratory Management will engage constructively with BSA Corporate to ensure they fully understand and, where necessary, assist in resolution of Laboratory issues including those related to environmental cleanup.

Objective 4.3 - Provide Efficient and Effective Corporate Office Support as Appropriate.

The weight of this Objective is 30%.

Measure 4.3.1

BSA Corporate will provide resources to demonstrate its commitment to the success of BNL. Consideration will be given to the strategic impact and the magnitude of corporate support, which may be in any form, such as:

- Enhancing relationships with state and local entities.
- Assuring leadership positions are filled in a timely manner.
- Leveraging agreements with external partners.
- Assisting with infrastructure improvement opportunities.
- Increasing operating efficiency.
- Supporting effort to increase efficiency of business and effectively manage indirects.
- Establishing joint appointments that are aligned with the strategic objectives of the Lab.
- Providing staff, expert advice, management systems, or similar assistance to achieve BNL objectives.

Target 4.3.1.1

Tangible resources will be provided by BSA Corporate to facilitate BNL objectives.

ELEMENT	Letter Grade	Numerical Score	Objective Weight	Total Points	Total Points
4.0 Provide Sound and Competent Leadership and Stewardship of the Laboratory					
4.1 Provide a Distinctive Vision for the Laboratory and an Effective Plan for Accomplishment of the Vision to Include Strong Partnerships Required to Carry Out those Plans			30%		
4.2 Provide for Responsive and Accountable Leadership throughout the Organization			40%		
4.3 Provide Efficient and Effective Corporate Office Support as Appropriate			30%		
Goal 4.0 Total					

Goal 5.0 Sustain Excellence and Enhance Effectiveness of Integrated Safety, Health, and Environmental Protection

The Contractor protects the safety and health of the doe contractor workforce, subcontractors, the community, and the environment in all DOE-sponsored work at the site, and sustains and enhances the effectiveness of integrated safety, health and environmental protection through a strong and well-deployed system.

The weight of this Goal is 20%.

Objective 5.1 - Provide a Work Environment that Protects Workers and the Environment

The weight of this Objective is 20%.

Measure 5.1.1

BSA will demonstrate progress in achieving and maintaining “best in class” safety and health performance. Within the framework of its Integrated Safety Management System, BSA will particularly focus on reducing worker injuries through:

- Worker involvement in work planning and feedback and improvement processes.
- Tracking and trending worker injuries, near misses, and error precursor conditions and events.
- Developing and sustaining a reporting culture that ensures feedback and improvement opportunities.
- Evaluating the causes of adverse incident/injury trends and taking effective corrective actions.
- Assessing nature and severity of worker injuries.
- Benchmarking best in class performers and incorporating lessons-learned into BSA’s ISM program.
- Ensuring high quality radiological and industrial hygiene monitoring of facilities and jobsites.
- Providing appropriate medical surveillance of workers.
- Maintaining a “Green” safety performance as reported in the Environmental Management (EM) Quarterly Performance Review throughout the Fiscal Year.

Target 5.1.1.1

BSA will meet the Office of Science goal of 0.25 DART cases per 200,000 hours worked

Target 5.1.1.2

BSA will meet the Office of Science goal of 0.65 TRC cases per 200,000 hours worked

Target 5.1.1.3

BSA will demonstrate a reporting culture through effective implementation of feedback and improvements processes for ES&H performance. DOE will evaluate through assessment of a representative sample of issues/events for appropriate categorization and effective causal analysis.

Objective 5.2 - Provide Efficient and Effective Implementation of Integrated Safety, Health and Environmental Management

The weight of this Objective is 60%.

Measure 5.2.1

BSA will implement, maintain, and continually improve an integrated safety management system that:

- Clearly states environmental and occupational health and safety (ESH) policies, programs and objectives appropriate for BNL operations,
- Identifies ES&H risks and legal requirements,
- Takes a proactive approach to ES&H risks and involves employees in the development and implementation of procedures,
- Controls or eliminates ES&H risks to prevent accidents,
- Monitors environmental management system (EMS) and occupational safety and health management (OSH) system performance, and
- Ensures continual review, evaluation, and improvement of the system.

Target 5.2.1.1

BSA will demonstrate full implementation of the three tiered Work Planning & Control Process based on DOE evaluation of a representative sample of work planning packages against the revised Work Planning and Control subject area.

Target 5.2.1.2

Work Planning and Control - Collective Exposure (ALARA). BSA will develop and meet an agreed-upon ALARA goal for FY08 based upon anticipated Laboratory work scope. The goal will be established and agreed upon by October 5, 2007. This goal will include Total Effective Dose Equivalent (TEDE) radiological exposure from all BNL Organizations, including Environmental Restoration Projects.

[Change control: During the course of the FY, BSA may submit an ALARA adjustment that changes the FY08 goal by +/- 10% for BHSO review and approval. Collective exposure goal changes must include a solid explanation for the adjustment].

Target 5.2.1.3

Development and Implementation of Hazard Controls - BSA will develop and implement an appropriate risk-based Corrective Action Plan in response to the BHSO FY07 Fire Protection Assessment and the BSA FY07 NTS Report.

Target 5.2.1.4

Feedback and improvement – BSA will demonstrate effective implementation of their safety observation process for Level 1, 2, and 3 managers by:

- Full implementation of the tracking and trending database evidences by the submission of mid-year and end of year reports.
- Meeting the established FY2008 Department/Division goals established in each manager's performance plan for number of documented safety observations (90% of Level 1, 2, and 3 Managers meeting goal).

Target 5.2.1.5

Feedback and Improvement - BSA will develop a set of performance measures for BHSO review and approval by March 30, 2008, that will demonstrate that the BNL ISMS program is effective. Performance against measures is to be incorporated into BSA Annual ISM Declaration.

Measure 5.2.2

ISO 14001 EMS and OHSAS 18001 Certification - BSA has acquired and maintained third-party certifications for the Environmental Management System (ISO 14001:2004) and the Occupational Safety and Health Management System (OHSAS 18001). These external certifications provide credibility and rigor to the implementation of the systems.

Target 5.2.2.1

Maintain certification of the Environmental Management System to the ISO 14001:2004 standard as determined by the third party audit.

Target 5.2.2.2

Maintain certification of the Occupational Safety & Health Management System to the OHSAS 18001 standard as determined by the third party audit.

Objective 5.3 – Provide Efficient and Effective Waste Management, Minimization, and Pollution Prevention.

The weight of this Objective is 20%.

Measure 5.3.1

BSA will demonstrate that it has effective processes in place for sustaining and enhancing Waste Management, Minimization, and Pollution Prevention to include:

- A management focus on reducing the inventory of unneeded materials and chemicals.
- Meeting the waste processing needs of BNL customers.
- Maintaining waste storage and processing areas in compliance with applicable laws and regulations.
- Working with internal customers to communicate best practices for waste minimization.
- Incentive programs for proposing projects to reduce waste and eliminate emissions.
- Developing new disposal pathways for wastes.
- Continuous improvement in waste management and pollution prevention practices.

Target 5.3.1.1

Develop and implement a plan to make the Pollution Prevention program sustainable:

Task 1:

- a. Evaluate a minimum of 4 alternatives for funding the P2 program including:
 1. Internal direct funding through direct allocation
 2. Tariff/tax on waste generation
 3. Continued overhead funding
 4. Recycle revenue
- b. Prepare an evaluation of alternatives and submit the evaluation to Management by 3/31/08.

Task 2:

- a. Management reviews the alternatives and directs the path forward by 6/30/08.

Task 3:

- a. Proceed with Management directive and establish new P2 program by 9/3/08.

Target 5.3.1.2

Continue progress with disposition of nuclear materials, legacy waste, excess materials and chemicals, and environmental projects including disposition of all excess U-233 with a goal of an overall reduction of the excess material footprint at BNL. A prioritized inventory of materials for disposition that apply to this target will be submitted to BHSO by December 31, 2007.

Target 5.3.1.3

Conduct a gap analysis, consistent with available guidance from DOE/SC, for implementation of Executive Order 13423, "Strengthening Federal Environmental, Energy and Transportation Management," and develop baselines to measure performance against.

ELEMENT	Letter Grade	Numerical Score	Objective Weight	Total Points	Total Points
5.0 Sustain Excellence and Enhance Effectiveness of Integrated Safety, Health, and Environmental Protection					
5.1 Provide a Work Environment that Protects Workers and the Environment			20%		
5.2 Provide Efficient and Effective Implementation of Integrated Safety, Health and Environmental Management			60%		
5.3 Provide Efficient and Effective Waste Management, Minimization, and Pollution Prevention			20%		
Goal 5.0 Total					

Goal 6.0 Deliver Efficient, Effective, and Responsive Business Systems and Resources that Enable the Successful Achievement of Laboratory Missions

The Contractor sustains and enhances core business systems that provide efficient and effective support to laboratory programs and its missions.

The weight of this Goal is 20%.

Objective 6.1 - Provide an Efficient, Effective, and Responsive Financial Management System(s).

The weight of this Objective is 30%.

Measure 6.1.1

The effectiveness and efficiency of the Financial Management System is validated by exercising appropriate control of funds and management of costs. This effort is substantiated through a vigorous process involving operational controls and day-to-day management, audits, assurances and reviews.

Target 6.1.1.1

BSA will demonstrate budget, fiscal and financial enterprise effectiveness and efficiency through BSA, DOE and third party assessments which conclude that no material weaknesses were identified.

Target 6.1.1.2

The effectiveness of the Financial Management System is validated by internal and external audits, assurances and reviews such as BSA's implementation of OMB Circular A-123 and DOE IG and GAO audits. BSA's success will be determined principally through audit/review results. At the expected performance level, the reports will disclose no material weaknesses and relatively few non-material weaknesses.

Target 6.1.1.3

Verifiable cost avoidance and/or cost saving measures will amount to \$250,000 or more.

Objective 6.2 - Provide an Efficient, Effective, and Responsive Acquisition and Property Management System(s).

The weight of this Objective is 25%.

Measure 6.2.1

The following items will be considered in determining the performance level of an effective and efficient Procurement System:

- The continued certification of the procurement system.
- Meeting the needs of the internal and external customers.

- The establishment and maintenance of appropriate internal controls.
- The continuous improvement of the acquisition management system in accordance with audits, reviews, strategic and corrective action plans.
- The development of responsible corporate citizenship by establishing desirable business practices.
- The continuous professional development of staff including awareness of acquisition management processes and procedures.

The overall evaluation of the measure may also consider any other relevant information directly or indirectly related to the acquisition management system that provides evidence (either positive or negative) of the effectiveness/efficiency of the contractor in meeting the objective.

Target 6.2.1.1

The summary result of the Procurement Balanced Scorecard (BSC) self-assessment that has been verified and validated by DOE will be used as the target. Achieving 90% of the BSC Measures meet expectations = B+.

Target 6.2.1.2

The demonstration that adequate staffing levels have been achieved and maintained to accomplish and sustain the goals and objectives of planned initiatives, strategic plans and corrective actions. During the first quarter of the year, BSA will provide DOE with a self-assessment of staffing levels needed for the upcoming year. The level necessary to achieve a B+ rating will be established jointly.

Measure 6.2.2

The following items will be considered in determining the performance level of an effective and efficient Property Management System:

- The continued certification of the property system.
- Meeting the needs of the internal and external customers.
- The establishment and maintenance of appropriate internal controls.
- The continuous improvement of the property management system in accordance with audits, reviews, strategic and corrective action plans.
- The development of responsible corporate citizenship by establishing desirable business practices.
- The continuous professional development of staff including awareness of property management processes and procedures.

The overall evaluation of the measure may also consider any other relevant information directly or indirectly related to the property management system that provides evidence (either positive or negative) of the effectiveness/efficiency of the contractor in meeting the performance objective.

Target 6.2.2.1

The summary result of the Property Balanced Scorecard (BSC) self-assessment that has been verified and validated by DOE will be used as the target. Achieving 90% of the BSC Measures meet expectations = B+.

Target 6.2.2.2

Demonstration of successful control of laptop computers. Provide DOE with a quarterly report regarding the loss of laptops. This report should:

- A. Include a trending analysis compared to prior FY losses (at a minimum, FY07 shall be included).
- B. Include an analysis on causes for the losses, identifying trends, and highlight deficiencies, if any, in the current system.
- C. Identify corrective action(s) taken to minimize losses.

Objective 6.3 - Provide an Efficient, Effective, and Responsive Human Resources Management System and Diversity Program.

The weight of this Objective is 20%.

Measure 6.3.1

BSA will achieve success in attracting and retaining highly qualified employees while maintaining an effective compensation and benefits program.

Target 6.3.1.1

By the end of FY 2008, BSA will have filled (75%) of the positions identified.

Target 6.3.1.2

Percent of terminating employees with the two highest performance levels (DP & CP) = 10% less than percentage of BNL's overall population with those two performance levels.

Target 6.3.1.3

Demonstrate proactive efforts in monitoring effectiveness of the Laboratory's benefits program. BSA will generate a report at the end of the fiscal year that documents the cost savings and or cost avoidances which resulted from BSA's proactive efforts to operate the benefits program in an efficient manner.

Target 6.3.1.4

CY 2008 salary plan for Scientific Staff is within 2% of its targeted market position.

Measure 6.3.2

BSA demonstrates successful Diversity Management practices that have a positive impact on workforce demographics and foster an inclusive work environment.

Target 6.3.2.1

95% of Level II Managers will complete Diversity Engagement Practices Checklist(s).

Target 6.3.2.2

100% of Scientific Departments will incorporate a diversity management component in their FY09 Business Plan.

Objective 6.4 - Provide Efficient, Effective, and Responsive Management Systems for Internal Audit and Oversight; Quality; Information Management; and Other Administrative Support Services as Appropriate.

The weight of this Objective is 15%.

Measure 6.4.1

BSA will demonstrate that it has an effective Contractor Assurance System. Factors to be considered in determining the performance level of the Contractor Assurance program include the effectiveness of the:

- BNL Quality Assurance Program;
- Integrated Assessment Program;
- Internal Audit and Oversight;
- Events and Issues Management Program;
- Causal analysis process;
- Assessment Tracking System (ATS);
- Corrective action effectiveness verification process.
- Employee Concerns Program.

Target 6.4.1.1

BSA will develop, implement and demonstrate significant progress towards completing actions responding to the FY 2007 review of the Contractor Assurance System.

Target 6.4.1.2

BSA will demonstrate a more effective and consistent process for analyzing SCBNL events and issues from surveillances and assessments using defined causal analysis methodologies.

Target 6.4.1.3

Reviews of Internal Audit will disclose no material weaknesses.

Measure 6.4.2

BSA will demonstrate that it has effective information management processes in place for the business related administrative enterprise systems (i.e., procurement, property, HR, Guest Information, etc.).

Target 6.4.2.1

BSA will demonstrate effectiveness for these business support enterprise systems through a joint customer survey of the Business Systems Division and the Information Technology Division. BSA will use the results of the survey to identify areas for improvement and develop an action plan.

Objective 6.5 - Demonstrate Effective Transfer of Technology and Commercialization of Intellectual Assets.

The weight of this Objective is 10%.

Measure 6.5.1

In accordance with its strategy and stewardship role, BSA will identify and protect intellectual assets and work to broaden the current portfolio.

Target 6.5.1.1

BSA will demonstrate through its commitment to broaden the portfolio and effective deployment of intellectual assets. BSA will report tri-annually on the progress of these targets. Further, BSA will deliver to BHSO a final report covering the entire performance period, which summarizes the results of its actions to demonstrate success. A rating of B+ will be assigned if actions identified, and accepted by DOE, demonstrate improvement over the previous year's technology transfer efforts.

Target 6.5.1.2

BSA will demonstrate through its commitment to increasing the commercial potential of its IP portfolio. BSA will report tri-annually on the progress of these targets. Further, BSA will deliver to BHSO a final report covering the entire performance period, which summarizes the results of its actions to demonstrate success. A rating of B+ will be assigned if actions identified, and accepted by DOE, demonstrate improvement over the previous year's technology transfer efforts.

Measure 6.5.2

BSA will maintain, and seek to improve, effective and efficient processes for the Laboratory's WFO and CRADA programs to enable successful relationships with industry.

Target 6.5.2.1

A rating of B+ will be assigned for demonstrated improvements made to foster the migration to more automated processes which support the efficient processing of WFO proposals and agreements.

ELEMENT	Letter Grade	Numerical Score	Objective Weight	Total Points	Total Points
6.0 Deliver Efficient, Effective, and Responsive Business Systems and Resources that Enable the Successful Achievement of the Laboratory Mission(s)					
6.1 Provide an Efficient, Effective, and Responsive Financial Management System(s)			30%		
6.2 Provide an Efficient, Effective, and Responsive Acquisition and Property Management System(s)			25%		
6.3 Provide an Efficient, Effective, Responsive Human Resources Management System, and Diversity Program			20%		
6.4 Provide Efficient, Effective, and Responsive Management Systems for Internal Audit and Oversight; Quality; Information Management; and Other Administrative Support Services as Appropriate			15%		
6.5 Demonstrate Effective Transfer of Technology and Commercialization of Intellectual Assets			10%		
Goal 6.0 Total					

Goal 7.0 Sustain Excellence in Operating, Maintaining, and Renewing the Facility and Infrastructure Portfolio to Meet Laboratory Needs

The Contractor provides appropriate planning for laboratory facilities and infrastructure needs required to efficiently and effectively carry out current and future S&T programs, and manages DOE facilities and infrastructure in a cost effective manner that ensures their safe and reliable operation consistent with program missions needs and DOE stewardship requirements.

The weight of this Goal is 15%.

Objective 7.1 - Manage Facilities and Infrastructure in an Efficient and Effective Manner that Optimizes Usage and Minimizes Life Cycle Costs

The weight of this Objective is 50%.

Measure 7.1.1

The management of real property assets to maintain effective operational safety, worker health, environmental protection and compliance, property preservation, and cost effectiveness while meeting program missions, through effective facility utilization, maintenance and budget execution. Factors to be considered in determining the performance level include:

- Conducting an ongoing Condition Assessment Survey (CAS) process and utilizing the CAS data in site, facilities, and maintenance planning.
- Maintaining an accurate space management database and optimizing space utilization.
- Accurately determining and recording real property valuation data.
- Ensuring optimum allocation of infrastructure project funding through a risk-based evaluation and decision process (3BPB and related budget processes).
- Determining when facilities should be declared excess and placing them in excess status with effective surveillance and maintenance programs.
- Promptly providing site, energy, and facilities information to DOE through regular reporting and periodic data calls.
- Managing the energy conservation program.
- Managing the DOE Environmental Restoration program projects.

Target 7.1.1.1

Maintain balanced priorities through effective utilization of the BNL Project, Planning, Programming and Budgeting Process (3BPB) project tracking and prioritization process. Have the Consolidated Unfunded Requirements List (CURL) funded projects approved by the BNL Policy Council in a timely manner.

Target 7.1.1.2

Environmental Restoration Projects must demonstrate effective project planning and cost control of remediation projects throughout the life cycle of the assigned projects.

Expectation: Annual Schedule Performance Index and Cost Performance Index will be maintained above 0.90.

Measure 7.1.2

The maintenance and renewal of building systems, structures and components associated with the Laboratory's facility and land assets. Factors to be considered in determining the performance level include:

- Operating an effective maintenance program including predictive and preventive maintenance.
- Deciding on level and allocation of maintenance effort and resources based on the Laboratory's Ten Year Site Plan.
- Integrating management of the deferred maintenance backlog with the Ten Year Site Plan.
- Tracking, trending, and managing facilities and utility systems reliability and availability to ensure customers can accomplish their mission objectives.

Target 7.1.2.1

BSA will maintain reliable electrical and building infrastructure. (Use existing infrastructure reliability index calculation.) The infrastructure reliability index (RI) will be 0.9997 (or better) for FY08.

$$(RI) = 0.6 (ESR) + 0.4 (BFR)$$

Electric System Reliability (ESR):

$$(ESR) = \frac{\text{Total Customer Hours} - \text{Unplanned Outage Customer Hours}}{\text{Total Customer Hours}}$$

Building and Facilities Reliability (BFR):

$$(BFR) = \frac{\text{Total Building Availability (ft}^2\text{-days)} - \text{Building Failures (ft}^2\text{-days)}}{\text{Total Building Availability (ft}^2\text{-days)}}$$

Target 7.1.2.2

The Laboratory's Maintenance Investment Index will meet DOE goals of MII \geq 2.0.

Target 7.1.2.3

The Laboratory's Deferred Maintenance Reduction expenditures will meet DOE SC proposed target for FY 2008. (Current DOE SC DMR target for BNL for FY 08 is \$7.163 million, as of 9/13/07).

Measure 7.1.3

In support of the goals of the Department of Energy's Transformational Energy Action Management (TEAM) initiative, and the goals and objectives contained in Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, the Contractor shall cooperate with federal Site Office personnel to provide full and open access to the maximum extent practicable to NNSA/DOE-contracted Energy Service Companies (ESCOs) under Energy Savings Performance Contracts (ESPCs), to facilitate on-site assessments of opportunities to improve the Site's energy efficiency, water reduction and renewable energy improvements, and shall provide advisory assistance in reviewing ESCO recommendations as directed by the Contracting Officer. The Contractor shall ensure ESCO personnel are granted access pursuant to contractual requirements; monitor ESCO activities to ensure that site safety and security requirements are adhered to; promptly provide information requested by ESCO personnel to assist them in developing viable recommendations; and, when directed by the Contracting Officer, assist the Site Office in the monitoring and execution of ESPC projects.

An update to the Ten Year Site Plan (TYSP) is developed and approved by DOE that adequately addresses the BNL site's contribution to meeting the Agency wide goals of the Secretarial TEAM initiative and the goals set forth in Executive Order 13423.

Target 7.1.3.1

The Team portion of the BNL TYSP will include detailed plans and milestones for achieving site-specific energy efficiency goals and objectives; will constitute an executable plan to meet the TEAM initiative; and be reviewed and accepted by BHSO by 9/30/2008.

Objective 7.2 - Provide Planning for and Acquire the Facilities and Infrastructure Required to Support Future Laboratory Programs.

The weight of this Objective is 50%.

Measure 7.2.1

Integration and alignment of the Ten Year Site Plan to the Laboratory's comprehensive strategic plan. Factors to be considered in determining the performance level include:

- Planning and managing the acquisition of utilities including load forecasting, utilities options studies, and negotiating long term utilities contract terms for recommendation to BHSO.
- Planning and obtaining budget support for line item infrastructure projects to meet the needs of the Lab's Strategic Plan.
- Developing sound business cases and proposing alternatively financed projects to meet the needs of the Lab's Strategic Plan.

- Coordinating the site, facility, and utility needs of large programmatic projects to ensure the project-Lab infrastructure interface is well-managed.

Target 7.2.1.1

BNL's Ten Year Site Plan is aligned with BNL's Business Plan. BNL's Project, Planning, Programming and Budgeting Process (3PBP) outcomes (e.g., projects approved by Policy Council) are aligned with BNL Business Plan. BNL will continue to study electric power supply options beyond the current three-year NYPA contract.

Measure 7.2.2

Effectively utilize Cost and Schedule Performance Index for management of construction projects (when appropriate). Factors to be considered in determining the performance level include:

- Develop and continuously improve a Lab-wide Earned Value Management System (EVMS) and supporting procedures.
- Train project engineers and managers in EVMS and related project management tools and techniques.
- Utilize cost, schedule, and technical baselines and regularly monitor performance to manage projects from GPP to line items, utilizing project management tools appropriate to project size and complexity.

Target 7.2.2.1

BSA manages SLI Line Item and GPP projects effectively to agreed scope, schedule, obligation and cost baselines using agreed upon Project Management measures. Programmatic Research Facilities (addressed in Goal 2) and Environmental Management funded projects (addressed in Target 7.1.1.2) are excluded here.

Measure 7.2.3

Develop a strategy for increasing investment in infrastructure which minimizes increases to the cost of doing business.

Target 7.2.3.1

Develop strategy by September 30, 2008.

ELEMENT	Letter Grade	Numerical Score	Objective Weight	Total Points	Total Points
7.0 Sustain Excellence in Operating, Maintaining, and Renewing the Facility and Infrastructure Portfolio to Meet Laboratory Needs					
7.1 Manage Facilities and Infrastructure in an Efficient and Effective Manner that Optimizes Usage and Minimizes Life Cycle Costs			50%		
7.2 Provide Planning for and Acquire the Facilities and Infrastructure Required to support Future Laboratory Programs			50%		
Goal 7.0 Total					

Goal 8.0 Sustain and Enhance the Effectiveness of Integrated Safeguards and Security Management (ISSM) and Emergency Management Systems

The Contractor sustains and enhances the effectiveness of integrated safeguards and security and emergency management through a strong and well deployed system. Commensurate, to the greatest degree possible, with an "open campus" philosophy, protect laboratory facilities, personnel, and classified and sensitive information from harm by implementing effective safeguards, security, and emergency management programs.

The weight of this Goal is 20%.

Objective 8.1 - Provide an Efficient and Effective Emergency Management System.

The weight of this Objective is 35%.

Measure 8.1.1

BSA will implement and maintain an Emergency Management program in a state of readiness. Factors to be considered in determining the performance level include:

- Conducting and maintaining a complete survey of hazards (chemical and radiological) at the Laboratory (Hazard Survey).
- Preparing and maintaining Emergency Planning Hazards Assessments (EPHAs) on facilities identified as needing them in the Hazard Survey.
- Developing and implementing Emergency Action Levels (EALs) and Protective Action Guides (PAGs) as needed.
- Conducting required training for ERO staff
- Conducting drills and exercises to assess ERO capability and laboratory staff response.
- Maintaining a consequence assessment team.
- Preparing and maintaining a Public Information program.
- Developing and maintaining memoranda of understanding/mutual aid agreements with appropriate offsite emergency response organizations.
- Establishing and maintaining a fully functional Emergency Operations Center (EOC).
- Continuously improving the Emergency Management program.

Target 8.1.1.1

All required Emergency Management procedures and processes will be implemented and available by September 30, 2008.

Target 8.1.1.2

Operational Emergencies are reported, managed and mitigated in manner that minimizes impacts to employee, guest and visitor safety and site operations; including timely notifications to DOE as discussed in the

Order; timely on-site notifications of affected personnel; and ERO participation/support.

Target 8.1.1.3

Results of external reviews, surveys and inspections demonstrate that emergency management systems are effective.

Objective 8.2 - Provide an Efficient and Effective System for Cyber-Security.

The weight of this Objective is 35%.

Measure 8.2.1

BSA will operate a cyber-security system that enhances the scientific mission by:

- Protecting the confidentiality, integrity and availability of Laboratory information and information systems;
- Minimizing the impact to the open, collaborative, scientific environment.
- Implementing the requirements of the Office of Science Program Cyber Security Plan (PCSP);
- Adopting DOE and industrial best practices;
- Striving for open dialog with, and feedback from our stakeholders – DOE employees, guests, and users;
- Continuously improving the system;
- Managing the Plan of Action and Milestones (POAM) process;
- Maintaining a current Authority to Operate (ATO).

Target 8.2.1.1

The results of external Cyber-Security program evaluations will be generally satisfactory, with only minor areas for improvement noted, demonstrating BSA's commitment to comply with DOE requirements.

Target 8.2.1.2

Plans of Action & Milestones (POA&M) will be completed on or ahead of schedule, demonstrating BSA's commitment to continually improve Cyber-Security and address any shortcoming in implementing DOE requirements.

Target 8.2.1.3

Regular communication with all stakeholders – DOE, employees, guests and users – will demonstrate the commitment to open dialog and feedback to continuously improve the Cyber-Security system.

Target 8.2.1.4

Contribute to Cyber-Security initiatives throughout the Office of Science by participating in workshops, peer reviews, site-assist visits, security tests and evaluations, and by promoting standards and evaluating technologies in collaboration with other laboratories.

Objective 8.3 – Provide an Efficient and Effective System for the Protection of Special Nuclear Materials, Classified Matter, and Property.

The weight of this Objective is 15%.

Measure 8.3.1

BSA will operate a safeguards and security system that protects special nuclear materials (SNM), classified matter, and property. Factors to be considered in determining the performance level include:

- Maintaining a well-trained and equipped protective force.
- Maintaining a DOE-approved Site Security Plan by periodic updates to integrate evolving site conditions and the changing security environment.
- Reducing risk by reducing the Laboratory's nuclear inventory.
- Continuously improving the site security surveillance and alarm system.
- Thoroughly investigating all security incidents.
- Coordinating with local law enforcement agencies and establishing mutual aid agreements where appropriate.
- Managing the access authorization and foreign visits and assignment processes.
- Communicating to the laboratory community about safeguards and security as appropriate.

Target 8.3.1.1

BSA will demonstrate an effective Safeguards system through external reviews, surveys, and inspections validated by satisfactory ratings and no evidence of programmatic failures.

Objective 8.4 – Provide an Efficient and Effective System for the Protection of Classified and Sensitive Information.

The weight of this Objective is 15%.

Measure 8.4.1

Strong protection of classified and sensitive information is appropriately demonstrated.

Target 8.4.1.1

Assess, mitigate, and properly report security events involving protection of classified and sensitive information within required reporting time frames.

Target 8.4.1.2

BSA will demonstrate an effective Security system through external reviews, surveys, and inspections validated by satisfactory ratings and no evidence of programmatic failures.

Measure 8.4.2

Implement an effective counterintelligence (CI) program to ensure that the Laboratory, Site Office and serviced facilities are provided the CI services that protect them from foreign intelligence services, espionage and international terrorist related threats.

Target 8.4.2.1

Develop a counterintelligence program plan for the northeast region that includes roles, responsibilities, authorities, accountabilities, functions and performance criteria. Manage the CI program to the plan.

Target 8.4.2.2

Keep Laboratory management, the Site Office and Headquarters elements informed in a timely manner regarding CI activities and issues. Manage and resolve issues appropriately.

ELEMENT	Letter Grade	Numerical Score	Objective Weight	Total Points	Total Points
8.0 Sustain and Enhance the Effectiveness of Integrated Safeguards and Security Management (ISSM) and Emergency Management Systems					
8.1 Provide an Efficient and Effective Emergency Management System			35%		
8.2 Provide an Efficient and Effective System for Cyber-Security			35%		
8.3 Provide an Efficient and Effective System for the Protection of Special Nuclear Materials, Classified Matter, and Property			15%		
8.4 Provide an Efficient and Effective System for the Protection of Classified and Sensitive Information			15%		

U.S. Department of Energy
and
Brookhaven Science Associates, LLC

ATTACHMENT J.3
APPENDIX C
SPECIAL FINANCIAL INSTITUTION ACCOUNT

**Applicable to the Operation of
The Brookhaven National Laboratory**

Contract No. DE-AC02-98CH10886
Modification No. M175

APPENDIX C

SPECIAL FINANCIAL INSTITUTION ACCOUNT

**DOE WILL COOPERATE WITH THE SELECTED
CONTRACTOR TO ARRANGE AN APPROPRIATE
AGREEMENT – SEE PART III, SECTION J, APPENDIX C**

**AMENDMENT TO AGREEMENT
CHECKS-PAID METHOD OF LETTER OF CREDIT FINANCING**

This is an Amendment to the Agreement entered into the First day of January 1998 between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as DOE); Associated Universities, Inc., corporation/legal entity existing under the laws of the State of New York, or successor contractor, (hereinafter referred to as the Contractor); and Chase Manhattan Bank, a banking institution wholly owned by Chase Manhattan Corporation, existing under the laws of the State of New York, located at 55 Water Street, Room 718, New York City, NY 10041, (hereinafter referred to as the Bank).

WHEREAS, the parties entered into an Agreement dated the First day of January 1998 entitled "Checks-Paid Method of Letter of Credit Financing;" and

WHEREAS, Brookhaven Science Associates, LLC succeeded Associated Universities, Inc., as the Contractor for Brookhaven National Laboratory effective the First day of March 1998; and

WHEREAS, The Chase Manhattan Corporation merged with J.P. Morgan & Co. Incorporated on December 31, 2000; and

WHEREAS, the parties have proceeded under the aforesaid Agreement from the First day of March 1998 until the date hereof; and

WHEREAS, the parties are desirous of formally extending the term of the aforesaid Agreement;

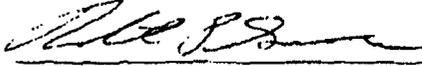
NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. The Term of the Agreement with all its provisions and covenants is hereby extended through the Fourth day of January, 2010.
2. DOE may extend the Term of the Agreement for an additional period of time to be contemporaneous with any extension of time granted by DOE to the Contractor for the operation of Brookhaven National Laboratory. Such notice shall not commit DOE to the extension, which shall only occur after a formal amendment to the agreement is executed by the parties.

IN WITNESS WHEREOF the parties hereto have caused this Amendment which consists of three pages including the signature pages, to be executed as of the day and year first above written.

11-16-07
Date Signed

By: Robert P. Gordon, Contracting Officer
(Typed Name of Contracting Officer)


(Signature of Contracting Officer)

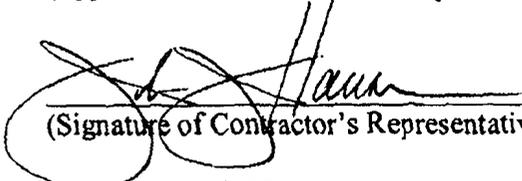
WITNESS

(Typed Name of Witness)

Brookhaven Science Associates, LLC
(Typed name of Contractor)

(Signature of Witness)

By: John J. Hauser
(Typed name of Contractor's Representative)


(Signature of Contractor's Representative)

Chief Financial Officer
(Title)

Note-In case of Company,
Witness not required. Type
names under all signatures.

P.O. Box 5000, Bldg. 460, Upton, NY 11973
(Address)

11-16-07
(Date of Signature)

(Typed Name of Witness)

JPMorgan Chase Bank
(Typed name of Bank)

(Signature of Witness)

By: Paul Lionikis
(Name of Bank Representative)


(Signature of Bank Representative)

Note-In case of Company,
Witness not required. Type
names under all signatures.

Vice President
(Title)

420 West Van Buren Street, Floor 09, Chicago, IL 60606
(Address)

11/30/07
(Date of Signature)

NOTE: The Contractor, if a Company, should cause the following Certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Amendment and the Certificate.

CERTIFICATE

I, Gregory Fess, certify that I am the Secretary of the Company named as Contractor herein; that John J. Hauser, who signed this Amendment on behalf of the Contractor was then Chief Financial Officer of said Company; that said Amendment was duly signed for and in behalf of said Company by authority of its governing body, and is within the scope of its Company powers.



Gregory Fess, Secretary Signature (Company Seal)
Brookhaven Science Associates, LLC

NOTE: Bank Repository, if a Corporation, should cause the following certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Amendment and the Certificate.

CERTIFICATE

I, _____, certify that I am the _____ of the Corporation named as Bank Depository herein; that _____, who signed this Amendment on behalf of the Bank Depository was then _____ of said Corporation; that said Amendment was duly signed for and in behalf of said Corporation by authority of its governing body, and is within the scope of its corporate powers.

Signature (Corporate Seal)

SEE ATTACHED
CERTIFICATE

CERTIFICATE OF
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

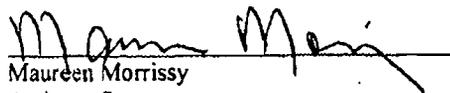
I, Maureen Morrissy, DO HEREBY CERTIFY that I am a duly elected and qualified Assistant Secretary of JPMorgan Chase Bank, National Association, a national banking association duly organized and existing under the laws of the United States of America (the "Bank") and that set forth below is a true and correct copy of resolutions duly adopted by the directors of the Bank pursuant to a unanimous written consent dated January 17, 2007. I further certify that said resolutions, at the date hereof, are still in full force and effect.

RESOLVED that loan agreements, contracts, indentures, mortgages, deeds, releases, conveyances, assignments, transfers, certificates, certifications, declarations, leases, discharges, satisfactions, settlements, petitions, schedules, accounts, affidavits, bonds, undertakings, guarantees, proxies, requisitions, demands, proofs of debt, claims, records, notes signifying indebtedness of JPMorgan Chase Bank, N.A. (the "Bank"), and any other contracts, instruments or documents in connection with the conduct of the business of the Bank, whether or not specified in the resolutions of the Bank's Board of Directors (the "Board") may be signed, executed, acknowledged, verified, delivered or accepted on behalf of the Bank by the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, a Vice Chairman of the Board, a Vice Chairman, any member of the Operating Committee or Executive Committee, any Executive Vice President, the Chief Financial Officer, the Treasurer, the Controller, the Chief Risk Officer, the Secretary, any Senior Vice President, any Managing Director, any Vice President, or any other officer who the Secretary or any Assistant Secretary certifies as having a functional title or official status which is equivalent to any of the foregoing, and the seal of the Bank may be affixed to any thereof and attested by the Secretary, any Vice President or any Assistant Secretary; *provided, however*, that any guarantees, comfort letters or other letters of support issued by the Bank in respect of obligations of any of the Bank's affiliates or subsidiaries ("Support Documents") may be executed only where consistent with such resolutions of the Board dated the date hereof, as may be amended, relating to the provision of Bank guarantees and other support issued by the Bank in respect of obligations of its subsidiaries and affiliates;

RESOLVED that powers of attorney may be executed on behalf of the Bank by the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, a Vice Chairman of the Board, a Vice Chairman, any member of the Operating Committee or Executive Committee, any Executive Vice President, the Chief Financial Officer, the Treasurer, the Controller, the Chief Risk Officer, the Secretary, any Senior Vice President, and by any Managing Director having a rank equivalent to Senior Vice President; *provided, however*, that such powers of attorney may not provide authority for signing Support Documents except as where consistent with such resolutions of the Board dated the date hereof, as may be amended, relating to the provision of Bank guarantees and other support issued by the Bank in respect of obligations of its subsidiaries and affiliates.

I further certify that **PAUL M. LIONIKIS** is a Vice President of JPMorgan Chase Bank, National Association and is empowered to act in conformity with the above resolutions.

WITNESS my hand and the seal of JPMorgan Chase Bank, National Association as of this 3rd day of December, 2007.


Maureen Morrissy
Assistant Secretary

(Corporate Seal)

Appendix H
Modification No. M175
Supplemental Agreement to
Contract No. DE-AC02-98CH10886

U.S. Department of Energy
And
Brookhaven Science Associates, LLC

ATTACHMENT J.8

APPENDIX H

FY'08 – SMALL BUSINESS SUBCONTRACTING PLAN

Applicable to the Operation of
The Brookhaven National Laboratory

Contract No. DE-AC02-98CH10886
Modification No. M175

FY08 Small Business Subcontracting Plan

Identification Data

Contractor: **BROOKHAVEN SCIENCE ASSOCIATES, LLC**

Address: **BROOKHAVEN NATIONAL LABORATORY**
Upton, New York 11973-5000

Contract Number: **DE-AC02-98CH10886**

Item/Service: **BASIC RESEARCH**

Total Amount of the Contract for the Performance Period: \$587,200,000.00

Period of Contract Performance: Oct. 1, 2007 through Sept. 30, 2008

1. Type of Plan

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

This plan is for FY08 as the small business goals are set for each fiscal year of the ongoing contract.

2. Goals

State separate dollar and percentage goals for Small Business, Woman-Owned Small Business, Small Disadvantaged Business, Veteran-Owned Small Business, Service-Disabled Veteran-Owned Small Business and HUB-Zone Small Business (hereafter referred to as the six small business categories), as subcontractors, for the basic and each option year, as specified in FAR 19.704

Individual goals are included in Appendix 1

Below is an estimate of the principle types of supplies and services to be subcontracted under this contract, and an indication of the types planned for subcontracting to the six categories of small business and large business.

Subcontracted Product/Service	SB	SDB	WOB	HUB	SDVOB	VOB	LB
<u>A&E</u>	X	--	X	--	--	X	X
<u>CONSTRUCTION</u>	X	X	X	X	X	X	X
<u>R&D</u>	X	X	X	--	--	--	X
<u>SERVICE</u>	X	X	X	X	X	X	X
<u>MAT'L/SUPPLIES</u>	X	X	X	X	X	X	X
<u>ELECTRICAL</u>	X	X	X	X	X	X	X
<u>IT (Computer)</u>	X	X	X	X	X	X	X
<u>EQUIPMENT (MAJOR)</u>	X	X	X	X	--	--	X

Note: The NAICS codes have not been included as the breadth of work subcontracted would require an extensive listing. The SBLO works directly with the procurement staff to ensure solicitations of small businesses to the maximum extent possible.

The six small business categories goals are based on consultations with the DOE and use BSA's current vendor base and directories including: DOD Central Contractor Registration (CCR), The DOE-OSDBU Small Business Contacts Database, Women's Chamber of Commerce, The Suffolk County Women's Business Enterprise Coalition, the Procurement Technical Assistance Center's Database, the SBA-SBDC's databases and sharing the Small Business databases from the other National Labs. The areas to be subcontracted to each target small business group are determined by historic references and current needs. Capabilities to provide goods and services are determined on an individual basis.

3. Indirect Costs

Indirect costs have *NOT* been included in the dollar and percentage subcontracting goals stated in Appendix 1.

4. Program Administrator

The contractor's subcontracting program administrator is:

Name: Jill Clough-Johnston
 Title: Small Business Liaison Officer

Address: Brookhaven National Laboratory
Procurement & Property Management Division – Bldg. 355
Upton, NY 11973-5000

Telephone: 631 344-3173 Email: clough@bnl.gov FAX: 631 344-5878

Duties: Has general overall responsibility for the contractor's subcontracting program, i.e. developing, preparing, and executing subcontracting plans and monitoring performance relative to the requirements of this particular plan. These duties include, but are not limited to, the following activities:

- A. Developing and promoting company-wide policy initiatives that demonstrate the company's support for awarding contracts and subcontracts to the six small business categories
- B. Making arrangements for the utilization of various sources for the identification of the six small business categories through some of the following resources: DOD Central Contractor Registration (CCR), The DOE-OSDBU Small Business Contacts Database, Women's Chamber of Commerce, the Procurement Technical Assistance Center's (PTAC) Database, the SBA-SBDC databases, sharing the Small Business databases from the other National Labs, and the National Minority Business Directory, etc. This effort will be focused on identification of reliable, competitive suppliers in the areas where we are lagging in our goals.
- C. Attending or arranging for the attendance of company counselors at various small business opportunity workshops; the six small business categories seminars, trade fairs, procurement conferences, etc.;
- D. Ensuring the six small business categories are made aware of subcontracting opportunities and how to prepare responsive bids to the laboratory;
- E. Conducting or arranging for the conduct of training for purchasing personnel regarding the intent and impact of Public Law 95-507 on purchasing procedures.
- F. The SBLO will support the PPM Compliance and Policy Officer in randomly reviewing solicitations, evaluations and procurements to ensure they permit the maximum possible participation of the six small business categories.
- G. Monitoring the over \$550,000 (\$1M for construction) subcontractors performance and making small business suggestions, where applicable, so

that any adjustments necessary to achieve the subcontracting plan goals can be made;

- H. Preparing, inputting and submitting timely subcontracting reporting through the eSRS;
- I. Coordinating BSA's activities during the conduct of compliance reviews by Federal agencies.
- J. Assuring the integrity of supplier information in the Central Contractor Registration (CCR) through a series of controls that include a review of Representations and Certifications of new suppliers. Ensure that supplier NAICS codes and socioeconomic classifications are included in supplier descriptions.

5. **Equitable Opportunity**

The contractor agrees to ensure that all of the six small business categories will have an equitable opportunity to compete for subcontracts. The various efforts include, but are not limited to, the following activities:

- A. Outreach efforts to obtain sources:
 - (i) The SBLO works with the Hauppauge Industrial Association (HIA), the Suffolk County Women's Business Enterprise Coalition (SCWBEC) and the MacArthur Business Alliance, and many other trade associations.
 - (ii) The SBLO also works with the: BNL/Stony Brook University/Farmingdale College Small Business Development Centers (SBDC), the Long Island Development Corp – Procurement Technical Assistance Program (PTAP); Small Business Administration (SBA), and SATOP (Space Alliance Technology Outreach Program).
 - (iii) Potential sources will be obtained from DOD Central Contractor Registration (CCR) database and other electronic medium.
 - (iv) Utilization of the Internet to obtain new sources.
- B. Internal efforts to guide and encourage purchasing personnel;
 - (i) Presenting workshops, seminars, and/or training programs, including training in the use of the CCR.

- (ii) Establishing, maintaining, and using the six small business categories source lists, guides, and other data for soliciting subcontracts for giving leads to procurement staff.
- (iii) Monitoring activities to evaluate compliance with the subcontracting plan.
- (iv) Maintaining a list of trip reports and other documentation on the outreach activities attended, including new sources, along with recommendations to buyers to include these sources in the next appropriate solicitation.

C. Outreach Events:

- (i) Develop an annual list of outreach events and activities to attend and participate in.
- (ii) Obtain a list of outreach activities to attend from the DOE Small Business Program Manager.

D. Additional Efforts:

- (i) Attend DOE annual small business conferences and other small business seminars and trade shows where it is expected that attendance will assist the identification of potential sources required to assist with reaching the small business goals.
- (ii) Continue to work closely with both the on & off site SBDC's and our local SBA office.
- (iii) Continue to network with other M&O contractor SBLOs,
- (iv) Continue to work closely with BSA's CEGPA directorate on outreach efforts,
- (v) Continue to provide contacts for small disadvantaged, HUB-Zone small businesses to learn how to become SBA certified,
- (vi) Maintain an internal Small Business Policy.
- (vii) Continue to participate in DOE SBPM conference calls.

5. Flow-Down Clause

The contractor agrees to include the provisions under FAR 52.219-8, "Utilization of Small Business Concerns," in all subcontracts that offer further subcontracting

opportunities. All subcontractors, except small business concerns, that receive subcontracts in excess of \$550,000 (\$1,000,000 for construction) must adopt and comply with a plan similar to the plan required by FAR 52.219-9 "Small Business Subcontracting Plan." (FAR 19.704)(a)(4).

Such plans will be reviewed by comparing them with the provisions of Public Law 95-507, and assuring that all minimum requirements of an acceptable subcontracting plan have been satisfied. The acceptability of percentage goals shall be determined on a case-by-case basis depending on the supplies/services involved, the availability of the six small business categories as subcontractors, and prior experience. Once approved and implemented, plans will be monitored through the submission of periodic reports, and/or, as time and availability of funds permit, periodic visits to subcontractors facilities to review applicable records and subcontracting program progress.

6. Reporting and Cooperation

The contractor gives assurance of (1) cooperation in any studies or surveys that may be required by the contracting agency or the Small Business Administration; (2) submission of periodic reports such as utilization reports, which show compliance with the subcontracting plan; (3) submission of small business subcontracting achievement data as reported on the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), to the eSRS and (4) ensuring that large business subcontractors with subcontracting plans agree to input to the eSRS.

7. Document Retention

The following is a recitation of the types of documents the contractor will maintain to demonstrate the procedures adopted to comply with the requirements and goals in the subcontracting plan. These documents will include, but not be limited to, the following:

- A. A list of sources, guides and other data used to identify suppliers and vendors.
- B. Organizations contacted in an attempt to locate all categories of small business sources.
- C. Documents to support internal guidance and encouragement, provided to buyers through:
 1. workshops, seminars, training programs
 2. monitoring of activities to evaluate compliance
- D. The procurement file for all subcontract solicitations over \$100,000 will contain AMS-Form-002 which indicates for each solicitation whether the six small business categories were solicited, and if not, why not: and the reason for failure of solicited the small business concerns to receive the subcontract award.

- E. Representations and Certifications Information
 - 1. Representations and certification for all new suppliers to substantiate their socio-economic status for reporting purposes, and as required, recertification of the socio-economic status of all suppliers.
 - 2. Maintenance of SBA certification approval of Small Disadvantaged and 8(a) suppliers.
 - 3. Maintenance of HUB-Zone certification approval through their CCR registration profile.

8. Mentor-Protégé Program

The Contractor agrees to establish and implement an official DOE approved “Mentor-Protégé” in accordance with DOE DEARS Part 19. The Small Business Program Manager is the individual designated to administer this program.

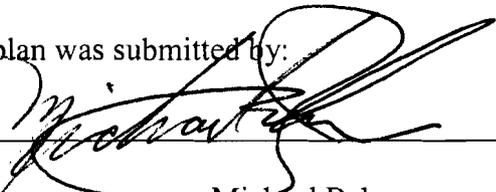
9. Description of Good Faith Effort

The Contractor intends to use all reasonable and good faith efforts (as described in this Plan) to award the stated percentages of the final actual subcontract base amount with small business, small disadvantaged business, women-owned small business, veteran-owned small business, service-disabled veteran-owned small business, and HUBZone small business concerns. The following steps shall be taken.

- A. Issue and promulgate company-wide policy statements in support of the six small business categories effort. Develop written procedures and work instructions, and assign specific responsibilities regarding requirements of the applicable Public Law.
- B. Review specific procurement actions for possible acquisition from the six eligible small business categories.
- C. Demonstrate continuing management interest and involvement in support of this effort through such actions as regular reviews of progress.
- D. Train and motivate BSA personnel regarding the need for the support of the six small business categories.
- E. Assist the six small business categories by arranging solicitations, allowing time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns to enable these firms to compete fairly.
- F. Counsel and discuss subcontracting opportunities with the six small business categories.
- G. Execute Service Agreements, Teaming Agreements, and Basic Ordering Agreements with small businesses from the qualified six small business categories, as required, in an attempt to ensure availability and usage of subcontractor personnel to support BSA work efforts when required.

- H. Make available specifications, drawings, and other relevant data so that qualified, known small businesses, in the six small business categories have an equal opportunity in preparing bids.
- I. Establish and maintain a categorized list of potential subcontractors with separate identification of the six small business categories.

This subcontracting plan was submitted by:

Signature:  _____

Typed Name: Michael Bebon
Title: Deputy Director for Operations

Date Prepared: 12/4/07

Approval:

Signature:  _____

Typed Name: Robert P. Gordon
Title: Contracting Officer

Date Prepared: 12-21-07

FY08 Subcontracting Plan – Appendix 1

Contractor: **BROOKHAVEN SCIENCE ASSOCIATES, LLC**

Address: **BROOKHAVEN NATIONAL LABORATORY**
Upton, New York 11973-5000

Contract Number: **DE-AC02-98CH10886**

1. Total estimated dollar value of all planned subcontracting (to all types of business concerns) under this contract is **\$205,112,000.00**.
2. The following percentage goals (expressed in terms of a percentage of total planned subcontracting dollars) and associated dollars are applicable to the contract cited above and will be pursued on a best efforts basis consistent with good commercial practices and best value assessments:
 - (i) **Small Business (SB) 41.30% or \$84,711,256.00** of total planned subcontracting dollars under this contract will go to subcontractors who are small business.
 - (ii) **8(a)/Small Disadvantaged Business (SB) 6.30% or \$12,922,056.00** of total planned subcontracting dollars under this contract will go to subcontractors who are 8(a)/small disadvantaged businesses. This percentage is included in the percentage shown under (2) (i) above as a subset.
 - (iii) **Woman-Owned Small Business (WOB): 5.80% or \$11,896,496.00** of total planned subcontracting dollars under this contract will go to subcontractors who are small business concerns owned and controlled by a woman or women. This percentage is included in the percentage shown under (2) (i) above as a subset.
 - (iv) **HUB Zone Small Businesses (HUB): 2.20% or \$4,512,464.00** of total planned subcontracting dollars under this contract will go to subcontractors who have received HUBZone certification through the Small Business Administration. This percentage is included in the percentage shown under (2) (i) above as a subset.
 - (v) **Veteran-Owned Businesses (VOB): 5.00% or \$10,255,600.00** of total planned subcontracting dollars under this contract will go to subcontractors who are small business concerns owned and controlled by a veteran. This percentage is included in the percentage shown under (2) (i) above as a subset.
 - (vi) **Service-Disabled Veteran-Owned Businesses (SDVOB): 1.30% or \$2,666,456.00** of total planned subcontracting dollars under this contract will go to subcontractors who are small business concerns owned and controlled by a service-disabled veteran. This percentage is included in the percentage shown under (2) (i) above as a subset.

Appendix I
Modification No. 175
Supplemental Agreement to
Contract No. DE-AC02-98CH10886

U.S. Department of Energy
and
Brookhaven Science Associates, LLC

ATTACHMENT J.9

APPENDIX I

DOE DIRECTIVES/LIST B

**Applicable to the Operation of
The Brookhaven National Laboratory**

**Contract No. DE-AC02-98CH10886
Modification No. 175**

Appendix I
Modification No. 175
Supplemental Agreement to
Contract No. DE-AC02-98CH10886

APPENDIX I

DOE DIRECTIVES

There is no List A to this Appendix.

List B to this Appendix contains two parts as follows:

Part I: "Directives List"

This section contains a list of Directives that are considered by DOE as applicable to the BNL contract.

Part II: "Partial Deletions of Directives"

This section contains a list of Directives that were accepted and implemented by the previous contractor but have subsequently been revised by DOE to remove certain sections.

Appendix I - Part I

CRD=Contractor Requirements Document

DIRECTIVES LIST		
DATE	DOE DIRECTIVE NUMBER	SUBJECT TITLE
2/26/01	N 153.1	CONNECTIVITY TO ATMOSPHERIC RELEASE ADVISORY CAPABILITY
8/11/03	N 153.2	CRD - CONNECTIVITY TO NATIONAL ATMOSPHERIC RELEASE ADVISORY CENTER (NARAC)
10/02/00	N 203.1	CRD - SOFTWARE QUALITY ASSURANCE
11/1/99	N 205.2	CRD - FOREIGN NATIONAL ACCESS TO DOE CYBER SYSTEMS (Extended until 8/12/05 by DOE N 205.14 dated 8/12/04) (Extended until 9/30/06 by DOE N 205.16 dated 9/15/05)
11/23/99	N 205.3	CRD - PASSWORD GENERATION, PROTECTION, AND USE (Extended until 8/12/05 by DOE N 205.14 dated 8/12/04) (Extended until 9/30/06 by DOE N 205.16 dated 9/15/05)
2/11/04	N 205.8	CRD - CYBER SECURITY REQUIREMENTS FOR WIRELESS DEVICES AND INFORMATION SYSTEMS (Extended until 03/18/06 by DOE N 205.15 dated 3/18/05)
2/19/04	N 205.9	CRD - CERTIFICATION AND ACCREDITATION PROCESS FOR INFORMATION SYSTEMS INCLUDING NATIONAL SECURITY SYSTEMS (Extended until 03/18/06 by DOE N 205.15 dated 3/18/05)
2/19/04	N 205.10	CRD - CYBER SECURITY REQUIREMENTS FOR RISK MANAGEMENT (Extended until 03/18/06 by DOE N 205.15 dated 3/18/05)
2/19/04	N 205.11	CRD - SECURITY REQUIREMENTS FOR REMOTE ACCESS TO DOE AND APPLICABLE CONTRACTOR INFORMATION TECHNOLOGY SYSTEMS (Extended until 03/18/06 by DOE N 205.15 dated 3/18/05)
8/12/04	N 205.14	EXTENSION OF DOE DIRECTIVES (N 205.2 and N 205.3)
3/18/05	N 205.15	EXTENSION OF DOE DIRECTIVES - NOTICES 205.8, 205.9, 205.10, 205.11, 205.12
9/15/05	N 205.16	EXTENSION OF DOE DIRECTIVES (N 205.2 and N 205.3)
9/14/05	N 206.3	PERSONAL IDENTITY VERIFICATION (Extended until 03/22/07 by DOE N 251.67 dated 11/22/06)
7/6/04	N 251.58	EXTENSION OF DOE DIRECTIVES (O 471.1A, M 471.1-1, AND O 473.2)
7/7/05	N 251.64	EXTENSION OF DOE DIRECTIVES (O 471.1A, M 471.1-1 Change1, M 472.1-1B, O 473.2, and N 473.9)
1/25/07	O 110.3A	CRD - CONFERENCE MANAGEMENT
9/29/95	O 130.1	CRD - BUDGET FORMULATION PROCESS
9/30/95	O 135.1	BUDGET EXECUTION-FUNDS DISTRIBUTION AND CONTROL
1/13/04	O 142.1	CRD - CLASSIFIED VISITS INVOLVING FOREIGN NATIONALS
12/15/06	O 142.2A	CRD - VOLUNTARY OFFER SAFEGUARDS AGREEMENT AND ADDITIONAL PROTOCOL WITH THE INTERNATIONAL ATOMIC ENERGY AGENCY
6/18/04	O 142.3	CRD - UNCLASSIFIED FOREIGN VISITS AND ASSIGNMENTS PROGRAM
11/2/05	O 151.1C	CRD - COMPREHENSIVE EMERGENCY MANAGEMENT SYSTEM
6/27/07	O 153.1	CRD - DEPARTMENTAL RADIOLOGICAL EMERGENCY RESPONSE ASSETS

DIRECTIVES LIST		
DATE	DOE DIRECTIVE NUMBER	SUBJECT TITLE
9/30/96	O 200.1	CRD - INFORMATION MANAGEMENT PROGRAM
1/7/05	O 203.1	LIMITED PERSONAL USE OF GOVERNMENT OFFICE EQUIPMENT INCLUDING INFORMATION TECHNOLOGY
12/4/06	O 205.1A	CRD – DEPARTMENT OF ENERGY CYBER SECURITY MANAGEMENT
4/17/06	M 205.1-3	TELECOMMUNICATIONS SECURITY MANUAL
3/8/07	M 205.1-4	CRD – NATIONAL SECURITY SYSTEM MANUAL
6/12/06	O 210.2	CRD – DOE CORPORATE OPERATING EXPERIENCE PROGRAM
3/22/01	O 221.1	CRD - REPORTING FRAUD, WASTE, AND ABUSE TO THE OFFICE OF INSPECTOR GENERAL
3/22/01	O 221.2	CRD - COOPERATION WITH THE OFFICE OF INSPECTOR GENERAL
11/26/97	O 225.1A	CRD - TYPE A AND B ACCIDENT INVESTIGATIONS
7/31/07	O 226.1A	CRD – IMPLEMENTATION OF DEPARTMENT OF ENERGY OVERSIGHT POLICY
3/19/04 9/9/04 6/12/07	M 231.1-1A Change 1 Change 2	CRD - ENVIRONMENT, SAFETY, AND HEALTH REPORTING MANUAL
8/19/03	M 231.1-2	CRD - OCCURRENCE REPORTING AND PROCESSING OF OPERATIONS INFORMATION
4/9/01 10/14/03	O 241.1A Change 1	CRD - SCIENTIFIC AND TECHNICAL INFORMATION MANAGEMENT
2/3/06	O 243.1	CRD - RECORDS MANAGEMENT PROGRAM
2/2/06	O 243.2	CRD - VITAL RECORDS
8/16/06	O 251.1B	CRD - DEPARTMENTAL DIRECTIVES PROGRAM
8/16/06	M 251.1-1B	CRD - DEPARTMENTAL DIRECTIVES PROGRAM MANUAL
11/19/99	O 252.1	CRD - TECHNICAL STANDARDS PROGRAM
9/30/96 5/8/98	O 350.1 Change 1	CRD - CONTRACTOR HUMAN RESOURCE MANAGEMENT PROGRAMS CRD - EMPLOYEE BENEFITS
10/29/03	O 350.2A	CRD - USE OF MANAGEMENT AND OPERATING OR OTHER FACILITY MANAGEMENT CONTRACTOR EMPLOYEES FOR SERVICES TO DOE IN THE WASHINGTON, D.C., AREA
4/21/05	O 412.1A	WORK AUTHORIZATION SYSTEM
4/18/02	O 413.1A	CRD - MANAGEMENT CONTROL PROGRAM
4/19/06	O 413.2B	CRD - LABORATORY DIRECTED RESEARCH AND DEVELOPMENT
7/28/06	O 413.3A	CRD - PROGRAM AND PROJECT MANAGEMENT FOR THE ACQUISITION OF CAPITAL ASSETS
03/28/03	M 413.3-1*	PROJECT MANAGEMENT FOR THE ACQUISITION OF CAPITAL ASSETS
6/17/05	O 414.1C	CRD - QUALITY ASSURANCE
5/20/02	O 420.1A	CRD - FACILITY SAFETY
7/23/04	O 420.2B	CRD - SAFETY OF ACCELERATOR FACILITIES

DIRECTIVES LIST		
DATE	DOE DIRECTIVE NUMBER	SUBJECT TITLE
3/13/03	O 425.1C	CRD - STARTUP AND RESTART OF NUCLEAR FACILITIES
09/24/03	O 430.1B	CRD – REAL PROPERTY ASSET MANAGEMENT
4/15/02	O 430.2A	CRD - DEPARTMENTAL ENERGY AND UTILITIES MANAGEMENT
6/01/01	O 433.1	CRD - MAINTENANCE MANAGEMENT PROGRAM FOR DOE NUCLEAR FACILITIES
7/9/99 8/28/01	O 435.1 Change 1	CRD - RADIOACTIVE WASTE MANAGEMENT
7/9/99 6/19/01	M 435.1-1 Change 1	RADIOACTIVE WASTE MANAGEMENT MANUAL
11/27/02 11/19/06	O 440.2B Change 1	CRD - AVIATION MANAGEMENT AND SAFETY
6/6/01	O 442.1A	CRD - DEPARTMENT OF ENERGY EMPLOYEE CONCERNS PRG.
11/16/06	M 442.1-1	CRD - DIFFERING PROFESSIONAL OPINIONS MANUAL FOR TECHNICAL ISSUES INVOLVING ENVIRONMENT, SAFETY, AND HEALTH
5/15/00	O 443.1	PROTECTION OF HUMAN SUBJECTS
1/15/03 1/3/07	O 450.1 Change 3	CRD – ENVIRONMENTAL PROTECTION PROGRAM
8/2/04	P 450.7	DOE ENVIRONMENT, SAFETY AND HEALTH GOALS
11/1/06	M 450.4-1	INTEGRATED SAFETY MANAGEMENT SYSTEM MANUAL
7/15/03	P 455.1	USE OF RISK-BASED END STATES
4/4/03	O 460.1B	CRD - PACKAGING AND TRANSPORTATION SAFETY
12/22/04	O 460.2A	CRD - DEPARTMENTAL MATERIALS TRANSPORTATION AND PACKAGING MANAGEMENT
9/23/02	M 460.2-1	CRD – RADIOACTIVE MATERIAL TRANSPORTATION PRACTICES MANUAL
10/31/02	O 470.2B	CRD - INDEPENDENT OVERSIGHT AND PERFORMANCE ASSURANCE PROGRAM
10/18/04	O 470.3	DESIGN BASIS THREAT POLICY (CLASSIFIED)
8/26/05 3/7/06	M 470.4-1 Change 1	CRD – SAFEGUARDS AND SECURITY PROGRAM PLANNING & MANAGEMENT
8/26/05 3/7/06	M 470.4-2 Change 1	CRD – PHYSICAL PROTECTION
8/26/05 3/7/06	M 470.4-3 Change 1	CRD – PROTECTIVE FORCE
8/26/05	M 470.4-4	CRD – INFORMATION SECURITY
8/26/05	M 470.4-5	CRD – PERSONNEL SECURITY
8/26/05 8/14/06	M 470.4-6 Change 1	CRD – NUCLEAR MATERIAL CONTROL AND ACCOUNTABILITY

DIRECTIVES LIST		
DATE	DOE DIRECTIVE NUMBER	SUBJECT TITLE
6/30/00	O 471.1A	CRD - IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (Extended until 06/30/05 by DOE N 251.58 dated 7/6/04) (Extended until 07/7/06 by DOE N 251.64 dated 7/7/05)
6/30/00 10/23/01	M 471.1-1 Change 1	IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION MANUAL (Extended until 06/30/05 by DOE N 251.58 dated 7/6/04) (Extended until 07/7/06 by DOE N 251.64 dated 7/7/05)
4/9/03	O 471.3	CRD - IDENTIFYING AND PROTECTING OFFICIAL USE ONLY INFORMATION
4/9/03	M 471.3-1	CRD - MANUAL FOR IDENTIFYING AND PROTECTING OFFICIAL USE ONLY INFORMATION
8/28/07	M 475.1-1B	CRD – MANUAL FOR IDENTIFYING CLASSIFIED INFORMATION
7/8/04	O 475.1	COUNTERINTELLIGENCE PROGRAM
8/28/07	O 475.2	CRD – IDENTIFYING CLASSIFIED INFORMATION
1/03/01 9/28/01	M 481.1-1A Change 1	REIMBURSABLE WORK FOR NON-FEDERAL SPONSORED PROCESS MANUAL
1/12/01	O 482.1	CRD - DOE FACILITIES TECHNOLOGY PARTNERING PROGRAMS
1/12/01	O 483.1	CRD - DOE COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS
1/12/01	M 483.1-1	DOE COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS
8/17/06	O 484.1	CRD - Reimbursable Work for the Department of Homeland Security
11/3/04	O 522.1	CRD - PRICING OF DEPARTMENTAL MATERIALS AND SERVICES
1/6/03	O 534.1B	CRD - ACCOUNTING
8/19/03	O 551.1B	CRD - OFFICIAL FOREIGN TRAVEL
7/12/00	M 573.1-1	MAIL SERVICES USER'S MANUAL
12/7/05	O 580.1	CRD – DEPARTMENT OF ENERGY PROPERTY MANAGEMENT PROGRAM
5/2/01	P 141.1	DEPARTMENT OF ENERGY MANAGEMENT OF CULTURAL RESOURCES
5/8/01	P 205.1	DEPARTMENTAL CYBER SECURITY MANAGEMENT POLICY
6/10/00	P 413.1	PROGRAM AND PROJECT MANAGEMENT POLICY FOR THE PLANNING, PROGRAMMING, BUDGETING, AND ACQUISITION OF CAPITAL ASSETS
5/15/00	P 443.1	PROTECTION OF HUMAN SUBJECTS
9/15/05	P 456.1	SECRETARIAL POLICY STATEMENT ON NANOSCALE SAFETY
5/08/01	P 470.1	INTEGRATED SAFEGUARDS AND SECURITY MANAGEMENT POLICY
5/20/02	P 580.1	MANAGEMENT POLICY FOR PLANNING, PROGRAMMING, BUDGETING, OPERATION, MAINTENANCE AND DISPOSAL OF REAL PROPERTY
11/12/92	1450.4	CONSENSUAL LISTENING-IN TO OR RECORDING TELEPHONE/RADIO CONVERSATIONS

DIRECTIVES LIST		
DATE	DOE DIRECTIVE NUMBER	SUBJECT TITLE
2/8/90 6/5/90 1/7/93	5400.5* Change 1 Change 2	RADIATION PROTECTION OF THE PUBLIC AND THE ENVIRONMENT
7/9/90 5/18/92 10/23/01	5480.19 Change 1 Change 2	CONDUCT OF OPERATIONS REQUIREMENTS FOR DOE FACILITIES
11/15/94	5480.20A	PERSONNEL SELECTION, QUALIFICATION AND TRAINING REQUIREMENTS FOR DOE NUCLEAR FACILITIES
5/8/85	5560.1A	PRIORITIES AND ALLOCATIONS PROGRAM
8/1/80	5610.2	CONTROL OF WEAPON DATA
5/26/94	5660.1B	MANAGEMENT OF NUCLEAR MATERIALS

Appendix I - Part II

PARTIAL DELETIONS OF DIRECTIVES				
DATE	DOE DIRECTIVE NUMBER	SUBJECT TITLE	DELETION DIRECTIVE DATE	SECTIONS DELETED
03/28/03	M 413.3-1	PROJECT MANAGEMENT FOR THE ACQUISITION OF CAPITAL ASSETS	O 413.3A 7/28/06	Chapters 1 through 3
2/8/90 6/5/90 1/7/93	5400.5 Change 1 Change 2	RADIATION PROTECTION OF THE PUBLIC AND THE ENVIRONMENT	O 231.1 9/30/95 Change 1 10/26/95	Chapter II: Para 1a(3) (a)

U.S. Department of Energy
and
Brookhaven Science Associates, LLC

ATTACHMENT J.12

APPENDIX L

**COMPUTATION OF FEE
FY2008**

**Applicable to the Operation of
The Brookhaven National Laboratory**

**Contract No. DE-AC02-98CH10886
Modification No. M175**

**APPENDIX L
FY2008 FEE COMPUTATION
FEE BASIS**

For FY2008, the performance measure model has one class of performance measures in Appendix B of the Prime Contract that is directly associated with fee (fee bearing). This reflects the approved FY2008 Performance Goals, Objectives, Measures and Targets for Science & Technology and Management and Operations. The FY2008 fee structure is in consonance with the following guidelines:

1. The maximum fee is to be in consonance with fees paid for the operation of similar FFRDC laboratories and will have a single tier structure;
2. While there are no current integrated subcontractor(s), the fees for integrated subcontractor(s), when and if they are again added to the BSA management structure, are included in the total fee set forth in Section B.3 for FY04 through the first quarter of FY08;
3. The fee structure is to be based on individual Target outcomes and their associated weights as determined separately;
4. The Performance Goal of Science and Technology will act as a “gate,” in that a final Grade of C (1.8) or above is required; there will be no fee if either Performance Goal outcome is D (1.0) or below.

Maximum Fee

The maximum fee that BSA can earn under this matrix for FY 2008 is established at \$7,400,000, if the performance goal for Science & Technology is scored 4.1 or above and Management and Operations is scored 3.1 or above. The scoring process is described in Appendix B.

Fee Matrix (Table 1)

Appendix B of the Prime Contract describes the scoring system for BSA’s performance. The “Percent S&T Fee Earned” from Appendix B is multiplied by the “M&O Fee multiple” from Appendix B to arrive at the total earned fee percentage. That percentage is then multiplied by the total available fee to arrive at BSA’s earned fee. See Fee Matrix below.

Table 1								
Overall Fee Determination								
Percent S&T Fee Earned from Appendix B, Table C.		M&O Fee Multiplier from Appendix B, Table C.		Overall Earned Performance-Based Fee		Maximum Performance Fee		Earned Fee
%	X		=	%	X	\$7,400,000	=	\$