

GENERAL PROVISIONS FOR
 COST REIMBURSEMENT ORDERS
 WITH EDUCATIONAL INSTITUTIONS
 UNDER
 U. S. DEPARTMENT OF ENERGY
 PRIME CONTRACT NO. DE-AC09-96SR18500
 WESTINGHOUSE SAVANNAH RIVER CO.,
 LLC
 SAVANNAH RIVER SITE
 AIKEN, SC 29808

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*Change Bar indicates that text of Article has
 changed from Revision 14*

**Incorporated by reference to appropriate FAR
 clause (<http://www.arnet.gov/far/>) and DEAR
 clause (<http://www.professionals.pr.doe.gov/>)*

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SECTION A

SECTION A ARTICLES APPLY REGARDLESS OF ORDER PRICE

A.1 DEFINITIONS

Whenever used in this document with initial capitalization, the following definitions shall be applicable unless the context indicates otherwise:

- A. "Contracting Officer" shall mean the Government official executing the Prime Contract No. DE-AC09-96SR18500, between WSRC and DOE and includes any appointed successor or authorized representative thereof.
- B. "DOE" shall mean the United States Department of Energy or any duly authorized representative thereof, including any successor or predecessor agency thereof, including the Contracting Officer.
- C. "Government" shall mean the United States of America.
- D. "Head of the agency" or "Secretary" shall mean the Secretary, the Under Secretary, and Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency.
- E. "Services" shall mean labor, direction of labor, production of technical information, consulting services or any other services furnished by Subcontractor and its Subcontractors under this Order, including services performed, workmanship, and materials furnished or used in performing services.
- F. "Subcontractor" shall mean the person or organization entering into this Order with WSRC.
- G. "Subcontractor" shall mean any subcontractor or supplier of any tier who supplies goods and/or services to Subcontractor in connection with Subcontractor's obligations under this Order.
- H. "Subcontractor's managerial personnel" shall mean any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of:
 - (1) All or substantially all of the Subcontractor's business;
 - (2) All or substantially all of the Subcontractor's operation at a plant or separate location at which this Order is being performed; or
 - (3) A separate and complete major industrial operation connected with performing this Order.
- I. "Supplies" shall mean equipment, components,

parts and materials, including, but not limited to, raw materials, components, inter-mediate assemblies, end products, lots of supplies and data to be provided by Subcontractor and its Subcontractors pursuant to this Order.

- J. "Vendor Data" shall mean any and all information, data and documentation to be provided by Subcontractor and its Subcontractors under this Order.
- K. "Work" shall mean Supplies, Services, and Vendor Data provided by Subcontractor and its Subcontractors and all work performed with respect thereto, pursuant to this Order.
- L. "WSRC" shall mean the Westinghouse Savannah River Company, LLC.
- M. "WSRC Purchasing Representative" shall mean a person with the authority to execute, administer, and terminate the contract, and make related determinations and findings. The term includes certain authorized representatives of the WSRC Purchasing Representative acting within the limits of their authority as delegated by the WSRC Purchasing Representative.

A.2 GENERAL

The terms and conditions of these General Provisions and those set forth elsewhere in this Order apply notwithstanding any different or additional terms and conditions which may be submitted or proposed by Subcontractor, and WSRC objects to and shall not be bound by any such additional or different terms and conditions.

- A. This Order, which term shall be deemed to include related plans, drawings, specifications, and other documents, contains the entire agreement and understanding between the parties as to the subject matter of this Order, and merges and supersedes all prior agreements, understandings commitments, representations, writings, and discussions between them. Neither of the parties will be bound by any prior obligations, conditions, warranties, or representations with respect to the subject matter of this Order. The parties agree that recourse may not be had to alleged prior dealings, usage of trade, course of dealing, or course of performance to explain or supplement the express terms of this Order.
- B. The failure of either party to enforce at any time any of the provisions of this Order or to require at any time performance by the other party of any of such provisions shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this Order or any parts thereof, or the right of either party thereafter to enforce each and every provision.

- C. The headings used in this Order are not to be construed as modifying, limiting or expanding in any way the scope or extent of the provisions in this Order.
- D. All references herein to the Department of Energy Acquisition Regulations (DEAR) or Federal Acquisition Regulations (FAR) are those in effect on the date of this Order.
- E. In the event of an inconsistency between provisions of this Order, the inconsistency shall be resolved by giving precedence as follows:
 - (1) Purchase order;
 - (2) These General Provisions;
 - (3) Statement of work; and
 - (4) Other provisions of this Order, whether incorporated by reference or otherwise.
- F. Subcontractor shall perform all Work pursuant to this Order as an independent contractor. If any part of the Work is subcontracted, Subcontractor is responsible for having that subcontracted Work comply with the terms of this Order. No act or order of WSRC shall be deemed to be an exercise of supervision or control of performance hereunder. No provision of this Order and no action taken by WSRC under this Order shall be construed to make or constitute WSRC the employer or joint employer of any of the employees of Subcontractor or any Subcontractor.

A.3 SUBCONTRACTING

- A. Subcontractor shall select Subcontractors on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of this Order.
- B. "Subcontract" as used in this article includes, but is not limited to, purchase orders, and changes and modifications to purchase orders. The Subcontractor shall notify WSRC reasonably in advance of entering into any subcontract if -
 - (1) The proposed subcontract is of the cost-reimbursement, time-and-materials, or labor-hour type;
 - (2) The proposed subcontract is fixed-price and exceeds either \$25,000 or five percent of the total estimated cost of this Order;
 - (3) The proposed subcontract has experimental, developmental or research work as one of its purposes; or
 - (4) The proposed subcontract provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment valued in excess of \$10,000 or of any items of facilities.
- C. (1) In the case of a proposed subcontract that

- (i) Is of the cost-reimbursement, time-and-materials, or labor-hour type and is estimated to exceed \$10,000, including any fee,
 - (ii) Is proposed to exceed \$100,000, or
 - (iii) Is one of a number of subcontracts with a single subcontractor, under this Order, for the same or related supplies or services that, in the aggregate, are expected to exceed \$100,000, the advance notification required by paragraph B above shall include the information specified in subparagraph (2) below.
- (2) (i) A description of the supplies or services to be subcontracted.
- (ii) Identification of the type of subcontract to be used.
- (iii) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained.
- (iv) The proposed subcontract price and the Subcontractor's cost or price analysis.
- (v) The Subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other Order provisions.
- (vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this Order.
- (vii) A negotiation memorandum reflecting -
- (a) The principal elements of the subcontract price negotiations;
 - (b) The most significant considerations controlling establishment of initial or revised prices;
 - (c) The reason cost or pricing data were or were not required;
 - (d) The extent, if any, to which the Subcontractor did not rely on subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
 - (e) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Subcontractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
 - (f) The reasons for any significant difference between the Subcontractor's price objective and the price negotiated; and
 - (g) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- D. The Subcontractor shall obtain WSRC's written consent before placing any subcontract for which advance notification is required under paragraph B above.
- E. Consent by WSRC to any subcontract shall not constitute a determination
- (1) Of the acceptability of any subcontract terms or conditions,
 - (2) Of the allowability of any cost under this Order, or
 - (3) To relieve the Subcontractor of any responsibility for performance.
- F. No subcontract placed under this Order shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in paragraph 15.404-4(c)(4)(i) of the Federal Acquisition Regulation.
- G. The Subcontractor shall give WSRC immediate written notice of any action or suit filed and prompt notice of any claim made against the Subcontractor by any subcontractor or vendor that, in the opinion of the Subcontractor, may result in litigation related in any way to this Order, with respect to which the Subcontractor may be entitled to reimbursement from WSRC.
- H. (1) The Subcontractor shall insert in each price redetermination or incentive price revision subcontract under this Order the substance of the paragraph "Quarterly limitation of payments statement" of the clause at FAR 52.216-5, Price Redetermination - Prospective, 52.216-6, Price Redetermination - Retroactive, 52.216-16, Incentive Price Revision - Firm Target, or 52.216-17, Incentive Price Revision - Successive Targets, as appropriate, modified in accordance with the paragraph entitled "Subcontracts" of that clause.
- (2) Additionally, the Subcontractor shall include in each cost-reimbursement subcontract

under this Order a requirement that the subcontractor insert the substance of the appropriate modified subparagraph referred to in subparagraph (1), above, in each lower tier price redetermination or incentive price revision subcontract under that subcontract.

- I. To facilitate small business participation in subcontracting, the Subcontractor agrees to provide progress payments on subcontracts under this Order that are fixed-price subcontracts with small business concerns in conformity with the standards for customary progress payments stated in FAR 32.502-1 and 32.504(f), as in effect on the date of this Order. The Subcontractor further agrees that the need for such progress payments will not be considered a handicap or adverse factor in the award of subcontracts.
- J. WSRC and the Government reserve the right to review the Subcontractor's purchasing system as set forth in FAR subpart 44.3.

A.4 CHANGES

- A. WSRC may at any time, by a written change notice from the WSRC Purchasing Department, and without notice to the sureties, if any, make changes, within the general scope of this Order. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Order, whether changed or not changed by the order, WSRC shall make an equitable adjustment in the Order price, (1) the time of performance or delivery schedule or both; and (2) other affected terms of this Order, and shall modify this Order accordingly. Any proposal by Subcontractor for adjustment under this article, together with such supporting information as WSRC may require, must be submitted in writing within thirty days from the date of receipt by the Subcontractor of the notification of change; provided however, that WSRC, if it decides that the facts justify such action, may receive and act upon any such proposal for adjustment at any time prior to final payment under this Order. Where the cost of property made obsolete or excess as a result of a change is included in Subcontractor's proposal for adjustment, WSRC shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute within the meaning of the article of this Order entitled "Disputes". However, nothing herein shall excuse Subcontractor from proceeding with this Order as changed.
- B. Any changes, extras or additional work made or

performed by Subcontractor without the prior written approval of the WSRC Procurement and Materials Management Department shall be at the sole risk and expense of Subcontractor, there being no financial recourse against WSRC or the Government whatsoever.

- C. Subcontractor shall not substitute other equipment or materials for those specified in this Order, or vary the quantity of the Work, or otherwise make any changes in the Work, without prior written consent of WSRC.
- D. Notwithstanding the terms and conditions of paragraphs A and B the estimated cost of this Order and, if this Order is incrementally funded, the funds allotted for the performance of this Order, shall not be increased or considered to be increased except by specific written modification of this Order indicating the new Order estimated cost and, if this Order is incrementally funded, the new amount allotted to this Order. Until this modification is made, Subcontractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost article of this Order.

A.5 APPROVALS

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

A.6 ALLOWABLE COST AND PAYMENT

- A. Invoicing
WSRC shall make payments to Subcontractor when requested as Work progresses, but (except for small business concerns) not more often than once every two weeks, in amounts determined to be allowable by WSRC in accordance with Office of Management and Budget (OMB) Circular A-21 and, as supplemented, DEAR 931.2, in effect on the date of this Order, and the terms of this Order. Subcontractor may submit to WSRC, in such form and reasonable detail as WSRC may require, an invoice supported by a statement of the claimed allowable cost for performing this Order. A reasonable detail of costs includes, but is not limited to:
 - (1) Labor categories used
 - (2) Hours expended for each category
 - (3) Direct labor rate(s) for each category
 - (4) Direct labor costs for each category
 - (5) Overhead rate(s) and total
 - (6) G&A (if applicable)

- (7) Travel costs (number of trips, number of days in a travel status, location of travel)
- (8) Material costs and other direct costs (with identification of large purchases).

B. Terms of Payment

The date of payment shall, subject to any contrary terms on the face hereof, be computed from WSRC's receipt of an acceptable invoice. Drafts will not be honored.

C. Reimbursing Costs

(1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only-

(i) Those recorded costs that, at the time of the request for reimbursement, Subcontractor has paid by cash, check, or other form of actual payment for items or services purchased directly for this Order;

(ii) When Subcontractor is not delinquent in paying costs of Order performance in the ordinary course of business, costs incurred, but not necessarily paid, for--

(a) Materials issued from Subcontractor's inventory and placed in the production process for use on this Order;

(b) Direct labor;

(c) Direct travel;

(d) Other direct in-house costs; and

(e) Properly allocable and allowable indirect costs, as shown in the records maintained by Subcontractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of progress payments that have been paid to Subcontractor's subcontractors under similar cost standards.

(2) Subcontractor's contributions to any pension, profit-sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; provided that Subcontractor pays the contribution to the fund within thirty days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until Subcontractor actually makes the payment. Accrued costs for such contributions that are paid less often than

quarterly shall be excluded from indirect costs for payment purposes until Subcontractor actually makes the payment.

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph H of this article, allowable indirect costs under this Order shall be obtained by applying indirect cost rates established in accordance with paragraph E.

(4) Any statements in specifications or other documents incorporated in this Order by reference designating performance of services or furnishing of materials at Subcontractor's expense or at no cost to WSRC shall be disregarded for purposes of cost reimbursement under this article.

D. Small Business Concerns

A small business concern may be paid more often than every two weeks and may invoice and be paid for recorded costs for items or services purchased directly for this Order, even though the concern has not yet paid for those items or services.

E. Final Indirect Cost Rates

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with FAR 42.7 and DEAR 942.7, in effect for the period covered by the indirect cost rate proposal.

(2) Subcontractor shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by WSRC, submit to the cognizant Contracting Officer responsible for negotiating its final indirect costs rates and, if required by DOE procedures, to the cognizant audit activity, proposed final indirect cost rates for that period and supporting cost data specifying the subcontract and/or lower tier subcontract to which the rates apply. The proposed rates shall be based on Subcontractor's actual cost experience for that period. The appropriate Government representative and Subcontractor shall establish the final indirect cost rates as promptly as practical after receipt of Subcontractor's proposal.

(3) Subcontractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify

(i) The agreed-upon final annual indirect cost rates,

(ii) The bases to which the rates apply;

(iii) The periods for which the rates apply;

(iv) Any specific indirect cost items treated

- as direct costs in the settlement; and
- (v) The affected subcontract and/or lower tier subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this Order. The understanding is incorporated into this Order upon execution.
- (4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the "Disputes" Article.
- F. Billing Rates
 Until final annual indirect cost rates are established for any period, WSRC shall reimburse Subcontractor at billing rates approved by the Government or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates-
- (1) Shall be the anticipated final rates; and
 - (2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- G. Quick-Closeout Procedures
 When Subcontractor and WSRC agree, the quick-closeout procedures of FAR 42.7 may be used.
- H. Audit
 At any time or times before final payment, WSRC may have Subcontractor's invoices or vouchers and statements of cost audited. Any payment may be
- (1) Reduced by amounts found by WSRC not to constitute allowable costs or
 - (2) Adjusted for prior overpayments or underpayments.
- I. Final Payment
- (1) Subcontractor shall submit a completion invoice, designated as such, promptly upon completion of the Work, but no later than one year (or longer, as WSRC may approve in writing) from the completion date. Upon approval of that invoice, and upon Subcontractor's compliance with all terms of this Order, WSRC shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
 - (2) Subcontractor shall pay to WSRC any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by Subcontractor or any assignee under this Order, to the extent that those amounts are properly allocable to costs for which Subcontractor has been reimbursed by WSRC. Reasonable expenses incurred by Subcontractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by WSRC. Before final payment under this Order, Subcontractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver-
- (i) An assignment to WSRC, in form and substance satisfactory to WSRC, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which Subcontractor has been reimbursed by WSRC under this Order; and
 - (ii) A release discharging WSRC, the Government, and their officers, agents, employees, and assigns from all liabilities, obligations, and claims arising out of or under this Order, except--
 - (a) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
 - (b) Claims (including reasonable incidental expenses) based upon liabilities of Subcontractor to third parties arising out of the performance of this Order; provided, that the claims are not known to Subcontractor on the date of the execution of the release, and that Subcontractor gives notice of the claims in writing to WSRC within six years following the release date or notice of final payment date, whichever is earlier; and
 - (c) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by Subcontractor under the patent clauses of this Order, excluding, however, any expenses arising from Subcontractor's indemnification of WSRC or the Government against patent liability.
- J. Overpayments. If Subcontractor becomes aware of a duplicate invoice payment or that WSRC has otherwise overpaid on an invoice payment, the Subcontractor shall immediately notify WSRC and request instructions for disposition of

the overpayment

A.7 PAYMENT BY ELECTRONIC FUNDS TRANSFER

A. Methods of Payment.

- (1) All payments by WSRC under this Order shall be made by Electronic Funds Transfer (EFT) except as provided in paragraph A.2 of this Article. As used in this Article, the term "EFT" refers to the funds transfer and may also include the payment information transfer.
- (2) In the event WSRC is unable to release one or more payments by EFT, Subcontractor agrees to either:
 - (i) Accept payment by check or some other mutually agreeable method of payment; or
 - (ii) Request WSRC to extend payment due dates until such time as WSRC makes payment by EFT.

B. Mandatory Submission of Subcontractor's EFT Information.

Subcontractor is required to provide WSRC with the information required to make payment by EFT. Subcontractor shall provide this information directly to the office designated in this Order, on forms provided by WSRC, no later than 15 days after award. If not otherwise specified in this Order, the payment office is the designated office for receipt of Subcontractor's EFT information. In the event that the EFT information changes, Subcontractor shall be responsible for providing the updated information to the designated office.

C. Mechanisms for EFT Payment.

WSRC may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System.

D. Suspension of Payment.

- (1) WSRC is not required to make any payment under this Order until after receipt, by the designated office, of the correct EFT payment information from Subcontractor. Until receipt of the correct EFT information, any invoice or subcontract financing request shall be deemed not to be a proper invoice for the purpose of payment under this Order.
- (2) If the EFT information changes after submission of correct EFT information, WSRC shall begin using the changed EFT information no later than 30 days after its receipt by the designated office. However, Subcontractor may request that no further

payments be made until the updated EFT information is implemented by the payment office.

E. Payment Information.

On the day payment on Subcontractor's invoice is due, WSRC will issue instructions to its bank to transfer payment to Subcontractor, and will also send a FAX to Subcontractor explaining the details to support the payment.

F. Liability for Uncompleted or Erroneous Transfers.

- (1) If an uncompleted or erroneous transfer occurs because WSRC used the Subcontractor's EFT information incorrectly, WSRC remains responsible for -
 - (i) Making a correct payment; and
 - (ii) Recovering any erroneously directed funds.
- (2) If an uncompleted or erroneous transfer occurs because Subcontractor's EFT information was incorrect, or was revised within 30 days of WSRC release of the EFT payment transaction instructions to the bank, and --
 - (i) If the funds are no longer under the control of the payment office, WSRC is deemed to have made payment and the Subcontractor is responsible for recovery of any erroneously directed funds; or
 - (ii) If the funds remain under the control of the payment office, WSRC shall not make payment and the provisions of paragraph D shall apply.

A.8 PASSAGE OF TITLE AND LIENS

A. Title to the Supplies shall pass to the Government at the place of delivery to WSRC. If purchased F.O.B. shipping point, delivery to the carrier shall be deemed to be delivery to WSRC.

B. Subcontractor agrees to furnish the Work free and clear of all liens, claims, and encumbrances. In the event that a lien of any nature shall at any time be filed against the Work or Subcontractor's or a Subcontractor's facility by any person, firm, or corporation which has supplied equipment, material, services or data, Subcontractor agrees promptly, on demand of WSRC and at Subcontractor's expense, to take any and all action necessary to cause any such lien to be released or discharged therefrom. Subcontractor agrees to save WSRC harmless from all liens, claims, or demands in connection with the Work.

C. Except as otherwise provided in this Order,

- (1) Subcontractor shall be responsible for the

loss or destruction of, or damage to, the Supplies until delivered at the designated delivery point, regardless of the point of inspection;

- (2) After delivery to WSRC at the designated point and prior to acceptance or rejection by WSRC, Subcontractor shall be responsible for the loss or destruction of or damage to the Supplies unless such loss, destruction, or damage results from negligence of the officers, agents, or employees of WSRC or the Government acting within the scope of their employment; and
- (3) Subcontractor shall bear all risks as to rejected Supplies after rejection.

A.9 ASSIGNMENT

WSRC may assign this Order to the DOE or to such party as DOE may designate to perform WSRC's obligations hereunder. Upon receipt by Subcontractor of written notice that the DOE or a party so designated by the DOE has accepted an assignment of this Order, WSRC shall be relieved of all responsibility hereunder and Subcontractor shall thereafter look solely to such assignee for performance of WSRC's obligations. Subcontractor shall not assign or transfer this Order or any interest herein, or claims hereunder, without the prior written consent of WSRC or WSRC's assignee.

A.10 FIXED FEE

WSRC shall pay Subcontractor for performing this Order the fixed fee specified; provided, that after payment of 85 percent of the fixed fee, WSRC may withhold further payment of fee until a reserve is set aside in an amount that WSRC considers necessary to protect the Government's interests. This reserve shall not exceed fifteen percent of the total fixed fee, or \$100,000, whichever is less.

A.11 LIMITATION OF FUNDS

Note: This article is applicable only if this Order is partially funded. If this Order is fully funded, see Article A.46.

- A. The parties estimate that performance of this Order will not cost WSRC more than the estimated cost specified. The Subcontractor agrees to use its best efforts to perform the Work and all obligations under this Order within the estimated cost.
- B. The Funding Schedule specifies the amount presently available for payment by WSRC and allotted by this Order, the items covered, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that WSRC will allot additional funds incrementally

to the Order up to the full estimated cost to WSRC specified in the Funding Schedule, exclusive of any fee. The Subcontractor agrees to perform, or have performed, Work on the Order up to the point at which the total amount paid and payable by WSRC under the contract approximates but does not exceed the total amount actually allotted by WSRC to the Order.

- C. The Subcontractor shall notify WSRC in writing whenever it has reason to believe that the costs it expects to incur under this Order in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the total amount so far allotted to the Contract by WSRC. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Funding Schedule.
- D. Sixty days before the end of the period specified in the Funding Schedule, the Subcontractor shall notify WSRC in writing of the estimated amount of additional funds, if any, required to continue timely performance under the Order or for any further period specified in the Funding Schedule or otherwise agreed upon, and when the funds will be required.
- E. If, after notification, additional funds are not allotted by the end of the period specified in the Funding Schedule or another agreed-upon date, upon the Subcontractor's written request WSRC will terminate this Order on that date in accordance with the provisions of the Termination clause of this Order. If the Subcontractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and WSRC may terminate this Order on that later date.
- F. Except as required by other provisions of this Order, specifically citing and stated to be an exception to this article -
 - (1) WSRC is not obligated to reimburse the Subcontractor for costs incurred in excess of the total amount allotted by WSRC to this Order; and
 - (2) Subcontractor is not obligated to continue performance under this Order (including actions under the Termination clause of this Contract) or otherwise incur costs in excess of (i) the amount then allotted to the Order by WSRC until WSRC notifies the Subcontractor in writing that the amount allotted by the Subcontractor has been increased and specifies an increased amount, which shall then constitute the total amount allotted by WSRC to this Order.

- G. The estimated cost shall be increased to the extent that the amount allotted by WSRC, exceeds the estimated cost specified in the Funding Schedule.
- H. No notice, communication, or representation in any form other than that specified in subparagraph F (2) above, or from any person other than cognizant WSRC Purchasing Agent, shall affect the amount allotted by WSRC to this Order. In the absence of the specified notice, WSRC is not obligated to reimburse the Subcontractor for any costs in excess of the total amount allotted by WSRC to this Order, whether incurred during the course of the Order or as a result of termination.
- I. When and to the extent that the amount allotted WSRC to the Order is increased, any costs the Subcontractor incurs before the increase that are in excess of the amount previously allotted by WSRC shall be allowable to the same extent as if incurred afterward, unless WSRC issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.
- J. Change Notice shall not be considered an authorization to exceed the amount allotted by WSRC specified in the Funding Schedule, unless they contain a statement increasing the amount allotted.
- K. Nothing in this article shall affect the right of WSRC to terminate this Order. If this Order is terminated, WSRC and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the Order, based upon the share of costs incurred by each.
- L. If WSRC does not allot sufficient funds to allow completion of the work, the Subcontractor is entitled to a percentage of the fee specified in the Funding Schedule equaling the percentage of completion of the Work contemplated by this Order.

- (ii) Employer's Liability: \$1,000,000
- (iii) General Liability: \$1,000,000 per occurrence
- (iv) Automotive Liability: \$500,000 per person and \$1,000,000 per occurrence for death or bodily injury and \$50,000 per occurrence for property damage or loss (minimum).

- (2) The Subcontractor may, with the approval of WSRC, maintain a self-insurance program, provided that, with respect to Worker's compensation, the Subcontractor is qualified pursuant to statutory authority.
- (3) All insurance required by this paragraph shall be in a form and for those periods as WSRC may require or approve and be with insurers approved by WSRC.
- (4) Upon request, Subcontractor shall provide evidence to WSRC of the required insurance coverage.
- B. The Subcontractor agrees to submit for WSRC's approval, to the extent and in the manner required by WSRC, any other insurance that is maintained by the Subcontractor in connection with the performance of this Order and for which the Subcontractor seeks reimbursement.
- C. The Subcontractor shall, to the extent WSRC is reimbursed by the Government, be reimbursed-
 - (1) For that portion
 - (i) Of the reasonable cost of insurance allocable to this Order and
 - (ii) Required or approved under this article; and
 - (2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the "Limitation of Cost" or the "Limitation of Funds" articles of this Order. These liabilities must arise out of the performance of this Order, whether or not caused by the negligence of the Subcontractor or of the Subcontractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by WSRC. These liabilities are for-
 - (i) Loss of or damage to property (other than property owned, occupied, or used by the Subcontractor, rented to the Subcontractor or in the care, custody, or control of the Subcontractor); or
 - (ii) Death or bodily injury.
- D. The liability under paragraph C. of this article is subject to the availability of funds at the time a contingency occurs. Nothing in this Order shall be construed as implying that the Congress will,

A.12 INSURANCE - LIABILITY TO THIRD PARTIES

- A. (1) Except as provided in subparagraph (2) immediately following, the Subcontractor shall provide and maintain Worker's compensation, employer's liability, comprehensive general liability (bodily injury) and comprehensive automobile liability (bodily injury and property damage) insurance, in at least the following amounts unless different amounts or coverages are specified in the Order:
 - (i) Worker's Compensation: As required by statute.

at a later date, appropriate funds to DOE and DOE will allocate funds to WSRC sufficient to meet these deficiencies.

- E. The Subcontractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)-
- (1) For which the Subcontractor is otherwise responsible under the express terms of any article specified elsewhere in this Order;
 - (2) For which the Subcontractor has failed to insure or to maintain insurance as required by WSRC; or
 - (3) That result from willful misconduct or lack of good faith on the part of any of the Subcontractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of-
 - (i) All or substantially all of the Subcontractor's business;
 - (ii) All or substantially all of the Subcontractor's operations at any one plant or separate location in which this Order is being performed; or
 - (iii) A separate and complete major industrial operation in connection with the performance of this Order.
- F. The provisions of paragraph E of this article shall not restrict the right of the Subcontractor to be reimbursed for the cost of insurance maintained by the Subcontractor in connection with the performance of this Order, other than insurance required in accordance with this article; provided, that such cost is allowable under the Allowable Cost and Payment article of this Order.
- G. If any suit or action is filed or any claim is made against the Subcontractor, the cost and expense of which may be reimbursable to the Subcontractor under this Order, and the risk of which is then uninsured or is insured for less than the amount claimed, the Subcontractor shall-
- (1) Immediately notify WSRC and promptly furnish copies of all pertinent papers received;
 - (2) Authorize Government and WSRC representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and
 - (3) Authorize Government and WSRC representatives to settle or defend the claim and to represent the Subcontractor in or to take charge of any litigation, if required by

WSRC or the Government, when the liability is not insured or covered by bond. The Subcontractor may, at its own expense, be associated with the Government or WSRC representatives in any such claim or litigation.

A.13 PUBLIC RELEASE OF INFORMATION

Information, data, photographs, sketches, advertising, announcements, denial, or confirmation of same, or items of a similar nature, relating to this Order, which Subcontractor desires to release or publish, shall be submitted to WSRC for approval eight weeks prior to the desired release date. As part of the approval request, Subcontractor shall identify the specific media to be used as well as other pertinent details of the proposed release. All releases by Subcontractors must have the prior approval of WSRC. Subcontractor shall include all provisions of this article including this sentence in all subcontracts or purchase orders under this Order. WSRC's approval shall not be unreasonably withheld.

A.14 TECHNICAL DIRECTION

- A. Performance of the Work under this Order shall be subject to the technical direction of the WSRC project manager or technical representative. The term "technical direction" is defined to include, without limitation:
- (1) Directions to the Subcontractor which redirect the Subcontractor's efforts, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the Work.
 - (2) Provision of written information to the Subcontractor which assists in the interpretation of drawings, specifications or technical portions of the work description.
 - (3) Review, and where required by the Order, approval of technical reports, drawings, specifications and technical information to be delivered by the Subcontractor to WSRC under the Order.
- B. Technical direction must be within the scope of work stated in the Order. The Project Manager or Technical Representative does not have the authority to, and may not, issue any technical direction which:
- (1) Constitutes an assignment of additional work outside the scope of Work;
 - (2) Constitutes a change as defined in Article A.4;
 - (3) In any manner causes an increase or decrease in the total estimated Order cost, the fixed fee (if any), or the time required

- for Order performance;
- (4) Changes any of the expressed terms, conditions or specifications of the Order; or
 - (5) Interferes with the Subcontractor's right to perform the terms and conditions of the Order.
- C. All technical directions shall be issued in writing by the project manager or technical representative.
- D. The Subcontractor shall proceed promptly with the performance of technical directions duly issued by the project manager or technical representative in the manner prescribed by this article and within his authority under the provisions of this article. If, in the opinion of the Subcontractor, any instruction or direction by the project manager or technical representative falls within one of the categories defined in B.(1) through (5) of this article, the Subcontractor shall not proceed. Rather the Subcontractor shall notify the WSRC Purchasing representative in writing within five (5) working days after receipt of any such instruction or direction and shall request the WSRC Purchasing representative to modify the Order accordingly. Upon receiving the notification from the Subcontractor, the WSRC Purchasing representative shall:
- (1) Advise the Subcontractor in writing within thirty (30) days after receipt of the Subcontractor's letter that the technical direction is within the scope of the Contract effort and does not constitute a change under the "Changes" article;
 - (2) Inform the Subcontractor in writing within thirty (30) days after receipt of the Subcontractor's letter not to perform under the direction and to cancel the direction; or
 - (3) Advise the Subcontractor within a reasonable time that WSRC will issue a written change notice.
- F. A failure of the Subcontractor and the WSRC Purchasing representative to agree that the technical direction is within the scope of the Work, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the "Disputes" article.
- A.15 TERMINATION**
- A. WSRC may terminate performance of work under this Order in whole or, from time to time, in part if WSRC determines that a termination is in WSRC's interest. WSRC shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.
- B. After receipt of a Notice of Termination and except as directed by WSRC, the Subcontractor shall immediately proceed with the following obligations:
- (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
 - (3) Terminate all applicable subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.
 - (4) Assign to WSRC or the Government, as directed by WSRC, all right, title, and interest of the Subcontractor under the subcontracts terminated, in which case WSRC or the Government shall have the right to settle or pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by WSRC, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; approval or ratification will be final for purposes of this clause.
 - (6) Transfer title to the Government (if not already transferred) and, as directed by WSRC, deliver to WSRC any information and items that, if the contract had been completed, would have been required to be furnished, including
 - (i) Materials or equipment produced, in process, or acquired for the work terminated and
 - (ii) Completed or partially completed plans, drawings and information.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that WSRC may direct, for the protection and preservation of the property related to this contract that is in the possession of the Subcontractor and in which the Government has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by WSRC, termination inventory other than that retained by the Government under subparagraph (6) above; provided, however, that the Subcontractor
 - (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 WSRC. The proceeds of

any transfer or disposition will be applied to reduce any payments to be made by WSRC under this contract, credited to the price or costs of the work, or paid in any other manner directed by WSRC.

- C. After termination, the Subcontractor shall submit a final termination settlement proposal to WSRC in the form and with the certification prescribed by WSRC. The Subcontractor shall submit the proposal promptly but no later than one year from the effective date of termination unless extended in writing by WSRC upon written request of the Subcontractor within this one-year period. If the Subcontractor fails to submit the termination settlement proposal within the time allowed, WSRC may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
- D. Subject to paragraph C. above, the Subcontractor and WSRC may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Subcontractor and any reasonable loss on outstanding commitments for personal service that the Subcontractor is unable to cancel; provided, that the Subcontractor exercised reasonable diligence in diverting such commitments to other operations. The order shall be amended and the Subcontractor paid the agreed amount.
- E. The cost principles and procedures in Subpart 31.3 of the Federal Acquisition Regulation (FAR), as supplemented by DEAR 931, in effect on the date of the Order, shall govern all costs claimed, agreed to, or determined under this clause; however, if the Subcontractor is not an educational institution, and is a nonprofit organization under Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Nonprofit Organizations." July 8, 1980, those cost principles shall apply; provided, that if the Subcontractor is a nonprofit institution listed in Attachment C of OMB Circular A-122, the cost principles at FAR 31.2 for commercial organizations shall apply to such contractor.
- F. WSRC may, under the terms and conditions it prescribes, make partial payments against cost incurred by the Subcontractor for the terminated portion of this Order, if WSRC believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
- G. The Subcontractor has the right of appeal as provided under the Disputes Article of this

Order, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph C. and failed to request a time extension, there is no right of appeal.

A.16 DISPUTES

- A. The Subcontractor shall not be entitled to and neither WSRC nor the Government shall be liable to the Subcontractor or its lower-tier suppliers or subcontractors in tort (including negligence), or contract, or otherwise, except as specifically provided in this Subcontract.
- B. The Parties shall attempt to settle any claim or controversy arising from this Order through consultation and negotiations in good faith and a spirit of mutual cooperation. If those attempts fail, then the dispute will be mediated by a mutually acceptable mediator chosen by the Parties within thirty (30) days after written notice by one party demanding mediation. Neither Party may unreasonably withhold consent to the selection of a mediator, and the Parties will share the costs of the mediation equally. Any dispute which cannot be resolved between the Parties through negotiation or mediation shall be resolved by litigation in a court of competent jurisdiction located in the State of South Carolina. Determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government; if there is no applicable Federal Government contract law, the law of the State of South Carolina shall apply in the determination of such issues.
- C. During the pendency of a dispute, the Subcontractor shall proceed diligently with performance of all terms of this Order. The Subcontractor's consent to so proceed shall not restrict or otherwise affect the Supplier's right to contest any claim.

A.17 OCCUPATIONAL SAFETY AND HEALTH ACT

Subcontractor warrants that any and all Work performed off the Savannah River Site and/or Supplies furnished shall comply with all requirements of the Occupational Safety and Health Act of 1970, as the same may be amended from time to time and including all regulations adopted pursuant to such Act, and shall comply with all requirements of any applicable health or safety statute or regulation of any state or local government agency having jurisdiction in the location to which Supplies are to

be shipped or Work is to be performed pursuant to this Order.

A.18 COMPLIANCE

Except as otherwise directed by WSRC, Subcontractor shall procure, without additional express to WSRC, all necessary permits or licenses and abide by all applicable laws, regulations and ordinances of the United States and of the state, territory, and political subdivisions in which the Work is performed.

A.19 RIGHTS TO PROPOSAL DATA

Except for the technical data contained on those pages of Subcontractor's proposal which are specifically identified in the Order with specific reference to this article and asserted by Subcontractor as being proprietary data, it is agreed that, as a condition of the award of this Order and notwithstanding the provisions of any notice appearing on the proposal or elsewhere, WSRC and the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this Order is based.

A.20 WSRC POLICY ON OPPORTUNITY

All subcontractors, vendors and suppliers are notified that it is the policy of the WSRC to provide equal employment opportunity and to adhere to federal, state and local laws pertaining thereto. Appropriate action shall be taken on the part of all WSRC subcontractors, vendors and suppliers to insure adherence to such laws.

A.21 TOXIC SUBSTANCES CONTROL ACT OF 1976

Subcontractor warrants that each and every chemical substance delivered under this Order shall, at the time of sale, transfer or delivery, be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to Section 8(b) of the Toxic Substances Control Act (Public Law 94-469).

A.22 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

A. Subcontractor agrees to submit a Material Safety Data Sheet for all hazardous materials/chemicals to the WSRC Purchasing Representative/STR for approval before chemical is brought onto SRS. This obligation applies to all materials delivered under this Subcontract which will involve exposure to hazardous materials/chemicals or items containing these materials/chemicals.

- B. All chemical containers shall be clearly labeled per OSHA standards. Chemicals not in a original container shall also be properly labeled with the product name and hazard markings per the Material Safety Data Sheet on file. Immediate use containers such as painter's pail, etc., are exempt from labeling requirements.
- C. Neither the requirements of this article nor any act or failure to act by WSRC or the Government shall relieve Subcontractor of any responsibility or liability for the safety of WSRC, Government, Subcontractor, or subcontractor personnel or property.
- D. Subcontractor shall comply with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the acquisition of licenses and permits) in connection with hazardous materials/chemicals.
- E. The Government's and WSRC's rights in data furnished under this Order with respect to hazardous materials/chemicals are as follows:
 - (1) To use, duplicate, and disclose any data to which this article 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/chemicals;
 - (ii) Obtain medical treatment for those affected by the material/chemical; and
 - (iii) Have others use, duplicate, and disclose the data for WSRC and the Government for these purposes.
 - (2) To use, duplicate, and disclose data furnished under this article, in accordance with subparagraph E (1) above, in precedence over any other article of this Order providing for rights in data.
 - (3) That WSRC and the Government are not precluded from using similar or identical data acquired from other sources.
 - (4) That the data shall not be duplicated, disclosed, or released outside of WSRC or the Government, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this article applies: "This is furnished under United States Government Contract No. DE-AC09-96SR18500 and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of WSRC. This legend shall be marked on any reproduction of this data."
 - (5) That Subcontractor shall not place the

legend or any other restrictive legend on any data which

- (i) Subcontractor or any Subcontractor previously delivered to WSRC or the Government without limitations or
- (ii) Should otherwise be delivered without limitations.

F. Subcontractor shall insert this article, including this paragraph F., with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this Order involving hazardous material/chemical.

A.23 MONTHLY ACCRUAL REPORT

- A. Subcontractor shall submit the following report to WSRC to arrive no later than the 20th day of each month.
 - (1) Amounts invoiced but not paid, including invoice numbers and dates.
 - (2) Amounts of actual costs and estimated costs incurred and fee earned through the last day of the month the report is due which have not been invoiced.

A.24 COMPLIANCE WITH EMPLOYEE CONCERNS

- A. Subcontractors shall ensure subcontractor employees are aware of the DOE-SRS and WSRC Employee Concerns Programs (ECP) and how to use the program by performing the following:
 - (1) Ensure employees are provided with information on the DOE-SRS and WSRC ECPs during initial orientation and annual training.
 - (2) Ensure that posters identifying the DOE-SRS and WSRC ECP telephone "hotline" numbers are displayed in conspicuous locations throughout the worksite. WSRC will provide posters, as necessary.
 - (3) Inform employees and subcontractor employees of the availability of the DOE-SRS ECP in case of dissatisfaction or lack of confidence with other reporting systems.
 - (4) Ensure managers and supervisors are aware of the prohibition of any reprisal against employees who have or are believed to have raised or reported concerns.
- B. Subcontractors must immediately notify the STR of any employee concern involving:
 - (1) A condition which constitutes an imminent threat to the health and safety of site personnel or to the general public.

- (2) Circumstances which would cause adverse public reaction or receive local media attention.
- (3) Allegations of reprisal.

C. Subcontractors shall investigate any employee concern referred by the STR and inform the STR of investigation results within 7 days of receipt of concern. Inform the STR in writing if an extension to this 7-day timeframe is required, along with status of investigation to date and actions pending to closure. The investigation shall be conducted to the satisfaction of the WSRC Purchasing Representative.

A.25 CONFIDENTIALITY OF INFORMATION

- A. To the extent that the work under this Order requires that the Subcontractor be given access to confidential or proprietary business, technical or financial information belonging to the Government, WSRC or other companies, the Subcontractor shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by WSRC or the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
 - (1) Information which, at the time of receipt by the Subcontractor, is in public domain;
 - (2) Information which is published after receipt thereof by the Subcontractor or otherwise becomes part of the public domain through no fault of the Subcontractor;
 - (3) Information which the Subcontractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the government or other companies;
 - (4) Information which the Subcontractor can demonstrate was received by it from a third party who did not require the Subcontractor to hold it in confidence.
- B. The Subcontractor shall obtain the written agreement, in a form satisfactory to WSRC, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Subcontractor's organization directly concerned with the performance of the Order.
- C. The Subcontractor agrees, if requested by the WSRC or the Government, to sign an agreement identical, in all material respects, to the provisions of this article, with each company supplying information to the Subcontractor

under this Order, and to supply a copy of such agreement to WSRC. From time to time upon request of WSRC, the Subcontractor shall supply WSRC with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Subcontractor received such information.

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

A.26 KEY PERSONNEL

The personnel specified in this Order are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Subcontractor shall notify WSRC reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by WSRC provided, that WSRC may ratify in writing such diversion and such ratification shall constitute the consent of WSRC required by this article. The Order may be amended from time to time, or an administrative letter may be issued, to either add or delete personnel, as appropriate.

A.27 FOREIGN TRAVEL

- A. Foreign travel, when charged directly, shall be subject to the prior approval of WSRC for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions.
- B. Request for approval shall be submitted at least sixty days prior to the planned departure date, on a Request for Approval of Foreign Travel form, and, when applicable, include a notification of proposed sensitive foreign nation travel.

A.28 STATE AND LOCAL TAXES

- A. The Subcontractor agrees to notify WSRC of any State or local tax, fee, or charge levied or purported to be levied on or collected from the Subcontractor with respect to the order work, any transaction thereunder, or property in the custody or control of the Subcontractor and constituting an allowable item of cost if due and

payable, but which the Subcontractor has reason to believe, or WSRC has advised the Subcontractor, is or may be inapplicable or invalid; and the Subcontractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by WSRC. Any State or local tax, fee, or charge paid with the approval of WSRC or on the basis of advice from WSRC that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

- B. The Subcontractor agrees to take such actions as may be required or approved by WSRC to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by WSRC to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for WSRC or the Government to join with the Subcontractor in any proceedings for the recovery thereof or to sue for recovery in the name of the Subcontractor. If WSRC directs the Subcontractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the Subcontractor for a tax, fee, or charge it has refrained from paying in accordance with this article, the costs and expenses incurred by the Subcontractor shall be allowable items of costs, as provided in this Order together with the amount of any judgment rendered against the Subcontractor.
- C. All recoveries or credits in respect of the foregoing taxes, fees and charges (including interest) shall inure to and be for the sole benefit of the Government.

A.29 WORKPLACE SUBSTANCE ABUSE PROGRAM

- A. Fitness for Duty
 - (1) The Subcontractor shall advise employees and the employees of lower tier subcontractors and agents that it is the policy of WSRC to prohibit the use, possession, sale and distribution of alcohol, drugs or other controlled substance within the limits of the Savannah River Site (SRS), and/or any off-Site facilities, and to prohibit the presence of individuals who have such substances in the body for non-medical reasons. Any Subcontractor employee who

is found in violation of the policy may be removed or barred from the site. The Subcontractor agrees to advise its employees and the employees of lower-tier subcontractors of the above policy prior to assignment to the Site and to maintain documentation that such advise has been given.

- (2) WSRC will collect urine specimens when Subcontractor employees are processed for badging. WSRC will send these specimens to a consultant for testing and verification. The testing process may take up to five (5) days to obtain results. In the event of "positive" findings, the Subcontractor will be notified and shall bring the individual to the Badge Office for an "Exit Conference". The Subcontractor then agrees to promptly remove such individual from the Savannah River Site and return the badge to the WSRC Subcontractor Badge Office.
 - (3) The Subcontractor agrees to secure the written consent of employees to release results of urine tests to the designated WSRC representative. WSRC agrees to use such results solely in connection with its decision as to whether to permit a Subcontractor employee, lower-tier subcontractor employee or agent to access Savannah River Site property.
 - (4) WSRC will also conduct for-cause and random drug and alcohol testing on all employees badged by WSRC. The Subcontractor agrees to comply with and secure the compliance of its employees and employees of lower-tier subcontractors with this testing. In the event of "positive" findings, the Subcontractor agrees to promptly remove such individual from the Savannah River Site and return his or her badge to the WSRC Subcontractor Badging Office.
 - (5) A Breath Alcohol Test will be given during the initial badging process and the results will be available immediately. In the event of "positive" findings, the Subcontractor's employee will not be badged, shall be issued a temporary pass, and will be escorted offsite by a Subcontractor's Representative.
- B. Suitability for Employment
- (1) Subcontractor employees, including employees of lower-tier subcontractors, who are to be badged to permit Savannah River Site access, must successfully complete Suitability for Employment process. As part of this process, the Subcontractor agrees to

advise its employees and employees of lower-tier subcontractors that they will be required to complete certain forms which authorize background investigations. These forms shall be submitted during the badging process.

- (2) Employees will be issued a photo badge and allowed site access on the first reporting day. In the event a Subcontractor's employee subsequently fails to successfully complete the background investigation, the Subcontractor agrees to promptly remove such individual from the site and to return the badge to the WSRC Subcontractor Badging Office.
- (3) Subcontractor agrees to advise its employees of the above requirement prior to assignment to the Savannah River Site and to maintain documentation that such advise has been given.

A.30 TAX WITHHOLDING FOR NONRESIDENTS

- A. Withholdings required by section 12-8-550 do not apply to payments on orders for tangible personal property when those payments are not accompanied by services to be performed within the state of South Carolina.
- B. Under Title 12 of the Code of Laws of South Carolina, section 12-8-550, two (2) percent of each and every payment made to Suppliers and Subcontractors who are nonresidents of the State of South Carolina and are conducting a business or performing personal services of a temporary nature carried on within South Carolina must be withheld and forwarded to the South Carolina Tax Commission in cases where an order or a subcontract exceeds or could reasonably be expected to exceed ten thousand dollars (\$10,000.00) WSRC will withhold as required by law.
- C. Under Title 12 of the Code of Laws of South Carolina, section 12-8-540, seven (7) percent (five (5) percent for corporations) of each and every payment of rentals or royalties to subcontractors who are nonresidents of the State of South Carolina must be withheld and forwarded to the South Carolina Tax Commission in cases where the payments amount to twelve hundred dollars (\$1,200.00) or more a year. WSRC will withhold as required by law.
- D. The above withholdings will not be made provided the Supplier presents the affidavit of registration with the South Carolina Department of Revenue or the South Carolina Secretary of

State's Office, or proof of having posted the appropriate bond with the South Carolina Tax Commission.

A.31 REPORTING OF ROYALTIES

If any royalty payments are directly involved in this Order or are reflected in the Order price, Subcontractor agrees to report in writing to WSRC during the performance of this Order and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this Order together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which the royalties are to be paid. The approval of DOE or WSRC of any individual payments or royalties shall not preclude the Government or WSRC at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payment is made. The provision of this article shall be included in all subcontracts that are expected to exceed \$25,000.

A.32 SECURITY

A. Responsibility

It is the Subcontractor's duty to safeguard all classified information, special nuclear material, and other DOE/WSRC property in its possession. The Subcontractor shall, in accordance with DOE/WSRC security and counterintelligence regulations and requirements, be responsible for safeguarding all classified, unclassified sensitive and proprietary information and protecting against sabotage, espionage, loss and theft of the classified, unclassified sensitive and proprietary matter in the Subcontractor's possession in connection with the performance of work under this Order. Except as otherwise expressly provided in this Order, the Subcontractor shall, upon completion or termination of this Order, transmit to WSRC any classified, unclassified sensitive, and proprietary matter in the possession of the Subcontractor or any person under the Subcontractor's control in connection with performance of this Order. If retention by the Subcontractor of any classified, unclassified sensitive, and proprietary matter in the Subcontractor's possession is required after the completion or termination of the Order and such retention is approved by the WSRC Purchasing Representative, the Subcontractor shall complete a certificate of possession to be furnished to

WSRC specifying the classified, unclassified sensitive, and proprietary matter in the Subcontractor's possession are to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the WSRC Purchasing Representative, the security provisions of this Order shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of this Order.

B. Regulations

The Subcontractor agrees to comply with all security and counterintelligence regulations and requirements of DOE/WSRC in effect on the date of award of this order.

C. Definition of Classified Information

The term "Classified Information" means Restricted Data, Formerly Restricted Data, or National Security Information.

D. Definition of Restricted Data

The term "Restricted Data" means all data concerning:

- (1) design, manufacture, or utilization of atomic weapons;
- (2) the production of special nuclear material; or
- (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

E. Definition of Formerly Restricted Data

The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142d. of the Atomic Energy Act of 1954, as amended.

F. Definition of National Security Information

The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12958 or prior Executive Orders to require protection against unauthorized disclosure, and which is so designated.

G. Definition of Special Nuclear Material (SNM)

SNM means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source

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

H. Security Clearance of Personnel

The Subcontractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12958, and DOE/WSRC regulations or requirements applicable to the particular level and category of classified information to which access is required.

I. Criminal Liability

It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Subcontractor or any person under the Subcontractor's control in connection with work under this Order, may subject the Subcontractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12958).

J. Subcontracts and Purchase Orders

Except as otherwise authorized in writing by the WSRC Purchasing Representative, the Subcontractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this Order.

A.33 SUBCONTRACTOR'S LIABILITY FOR FINES AND PENALTIES

- A. Subcontractor is liable to WSRC for fines and penalties assessed by any governmental entity against WSRC or DOE as a result of Subcontractor's failure to perform its work under the Order in compliance with the requirements of the Order.
- B. Subcontractor shall indemnify and hold harmless WSRC and DOE from and against any and all claims, demands, actions, causes of action, suits, damages, expenses, including attorney's fees, and liabilities whatsoever resulting from or arising in any manner on account of the assessment of said fines and penalties against WSRC or DOE.

A.34 FOREIGN NATIONALS

- A. Visits and assignments by foreign nationals to DOE/WSRC Facilities shall require approval in accordance with DOE Policy and Notice 142.1.
- B. The Supplier shall obtain the approval of WSRC, in writing, prior to any visit to a DOE or WSRC

facility by any foreign national in connection with work being performed under this Order. Visits are normally for the purpose of technical discussions, orientation, observation of projects or equipment, training, subcontract service work, including delivery of materials, or for courtesy purposes. The term "visit" also includes officially-sponsored attendance at a DOE or WSRC event off-site from the DOE/WSRC facility, but does not include off-site events and activities open to the general public. Suppliers should be aware that required forms and documents necessary for approval of visits by foreign nationals should be submitted at least four (4) to six (6) weeks prior to the visit, depending on the nationality of the individual and the areas to be visited. Forms can be obtained from the WSRC Purchasing Representative.

A.35 JOINT INTELLECTUAL PROPERTY RIGHTS

- A. "Joint Intellectual Property Rights" shall mean any work under the subcontract, which:
 - (1) Results from the involvement of at least one employee/participant from each of WSRC and the Subcontractor; and
 - (2) The subject matter of which is capable of protection under domestic or foreign law, including but not limited to, patents, copyrights, trademarks, or mask works.
- B. As to Joint Intellectual Property Rights, in which WSRC has a joint ownership interest, the Subcontractor agrees to negotiate in good faith with WSRC a Memorandum of Agreement to resolve issues of participation in protection and commercialization.

A.36 PRICE-ANDERSON AMENDMENTS ACT

- A. The Department of Energy has promulgated Procedural Rules (10 CFR 820), Nuclear Safety Management Rules (10 CFR 830), and Radiation Protection Rules (10 CFR 835) in implementation of the Price-Anderson Amendments Act (PAAA) of 1988, Public Law 100-408, August 20, 1988. These rules govern the conduct of persons involved in DOE nuclear activities, and, in particular, are designed to achieve compliance with DOE nuclear safety requirements. Violation of the applicable rules will provide a basis for the assessment of civil and criminal penalties under the PAAA.
- B. This Order is subject to the requirements of the above rules if the performance of work involves

conducting activities (including providing items and services), on or off the Savannah River Site, that affect, or may affect, the safety of DOE nuclear facilities.

C. Indemnification of WSRC

To the extent permitted by law, the Supplier assumes full responsibility and shall indemnify, save harmless, and defend WSRC and its principal subcontractors, their agents, officers, employees, and directors from any civil or criminal liability under Sections 234A or 223 (c) of the Act or the implementing regulations at 10 CFR Sections 820, et seq., arising out of the activities of the Supplier, its lower-tier subcontractors, suppliers, agents, employees, officers, or directors. The Supplier's obligation to indemnify and hold harmless shall expressly include attorneys fees and other reasonable costs of defending any action or proceeding instituted under Sections 234A or 223 (c) of the Act or the implementing regulations at 10 CFR Sections 820, et seq. A copy of the implementing regulations at 10 CFR Sections 820, et seq., will be made available to the Supplier upon request.

A.37 SUPPLEMENTAL DEFINITIONS FOR FAR AND DEAR CLAUSES INCORPORATED BY REFERENCE

- A. "Contract" means this Subcontract or Purchase Order (except in instances when it is not applicable or appropriate), and includes changes and modifications to this Subcontract.
- B. "Contractor" means the party to whom this Subcontract or Purchase Order is awarded (except in instances when it is not applicable or appropriate).
- C. "Government" means WSRC (except in instances when it is not applicable or appropriate).
- D. "Contracting Officer" means the Procurement Representative of WSRC.
- E. "Lower-Tier Subcontractor" means any party entering into an agreement with the Subcontractor or any lower-tier Subcontractor for the furnishing of supplies or services required for performance of this Subcontract.

This Subcontract or Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, WSRC will make their full text available.

***A.38 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)**

DEAR 952.250-70

***A.39 EQUAL OPPORTUNITY (FEB 1999)**

FAR 52.222-26

***A.40 STOP WORK ORDER (AUG 1989)**

FAR 52.242-15, modified pursuant to Alternative I

***A.41 CONVICT LABOR (AUG 1996)**

FAR 52.222-3

***A.42 PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SHORT FORM) (FEB 1995)**

DEAR 952.227-11

***A.43 NOTICE OF LABOR DISPUTES (APR 1984)**

FAR 52.222-1

***A.44 INTEREST (JUN 1996)**

FAR 52.232-17, with the addition of a paragraph (d) to read as follows: "(d) No interest is payable to the Supplier for any claim or voucher the Supplier may submit for payment except as specifically imposed by a Court on any judgment obtained by the Supplier or as otherwise provided herein."

***A.45 WHISTLEBLOWER PROTECTION FOR SUBCONTRACTOR EMPLOYEES (DEC 2000)**

NOTE: This Article applies only with respect to work to be performed on-Site.
DEAR 952.203-70

***A.46 LIMITATION OF COST (APR 1984)**

NOTE: This article is applicable only if this Order is fully funded. If this Order is partially funded, see Article A.11.
FAR 52.232-20

***A.47 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)**

FAR 52.242-1

***A.48 FACILITIES CAPITAL COST OF MONEY (OCT 1997)**

FAR 52.215-30

***A.49 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997)**

FAR 52.215-31

***A.50 ACCESS TO AND OWNERSHIP OF RECORDS (DEC 2000)**

DEAR 970.5204-3

***A.51 ACCOUNTS, RECORDS AND INSPECTIONS (DEC 2000)**

DEAR 970.5232-3

***A.52 PROPERTY (DEC 2000)**

DEAR 970.5245-1

***A.53 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1998)**

FAR 52.244-6

***A.54 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JULY 2000)**

FAR 52.225-13

***A.55 PENSION ADJUSTMENTS AND ASSET REVERSIONS (DEC 1998)**

FAR 52.215-15

***A.56 REVERSION OR ADJUSTMENT OF PLANS FOR POST RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (OCT 1997)**

FAR 52.215-18

SECTION B

SECTION B ARTICLES APPLY IF THE PRICE OF THIS ORDER EXCEEDS \$2,500.

(This Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, WSRC will make their full text available. Reference Article A.37, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)

***B.1 BUY AMERICAN ACT-BALANCE OF PAYMENTS PROGRAM-SUPPLIES (FEB 2002)**

FAR 52.225-1

SECTION C

SECTION C ARTICLES APPLY IF THE PRICE OF THIS ORDER EXCEEDS \$10,000.

(This Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, WSRC will make their full text available. Reference Article A.37, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)

***C.1 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**

FAR 52.222-36

***C.2 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)**

FAR 52.222-35

***C.3 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)**

FAR 52.222-37

***C.4 PATENT INDEMNITY (APR 1984)**

FAR 52.227-3

***C.5 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**

FAR 52.222-21

SECTION D

SECTION D ARTICLES APPLY IF THE PRICE OF THIS CONTRACT EXCEEDS \$25,000.

D.1 INSPECTION OF SUPPLIES AND SERVICES

A. Definitions

- (1) "Sellers managerial personnel" as used in this article, means the Sellers directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of -
 - (i) All or substantially all of the Subcontractor's business;
 - (ii) All or substantially all of the Subcontractor's operation at any one

- plant or separate location at which the Order is being performed; or
- (iii) A separate and complete major industrial operation connected with performing this Order.
- (2) "Work" as used in this article, includes data when the Order does not include the Warranty of Data clause.
- B. The Subcontractor shall provide and maintain an inspection system acceptable to WSRC and the Government covering the work under this Order. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to WSRC and the Government during Order performance and for as long afterwards as the Order requires.
- C. WSRC and the Government have the right to inspect and test all work called for by their Order, to the extent practicable at all places and times, including the period of performance and in any event before acceptance. WSRC and the Government may also inspect the plant or plants of the Subcontractor or its subcontractors engaged in the Order performance. WSRC and the Government shall perform inspections and tests in a manner that will not unduly delay the work.
- D. If WSRC or the Government performs any inspection or test on the premises of the Subcontractor or a subcontractor, the Subcontractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- E. Unless otherwise provided in the Order, WSRC shall accept work as promptly as practicable after delivery, and work shall be deemed accepted ninety days after delivery, unless accepted earlier.
- F. At any time during Order performance, but not later than six months (or such other time as may be specified in the Order) after acceptance of all of the end items (other than designs, drawings or reports) to be delivered under the Order, WSRC may require the Subcontractor to correct or replace work not meeting Order requirements. Time devoted to the correction or replacement of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph G. below, the cost of any such replacement or correction shall be determined as specified in the Allowable Cost and Payment article. The Subcontractor shall not tender for acceptance corrected work without disclosing the former requirement for correction, and, when required, shall disclose the corrective

action taken.

- G. If the Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, WSRC may
- (1) By contract or otherwise, perform the replacement or correction and charge to the Subcontractor any increased cost,
 - (2) Require delivery of any undelivered articles, or
 - (3) Terminate the contract. Failure to agree on the amount of increased cost to be charged to the Subcontractor shall be a dispute.

(This Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, WSRC will make their full text available. Reference Article A.37, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)

***D.2 PROTECTION OF GOVERNMENT'S INTEREST IN SUBCONTRACTING (JUL 1995)**

FAR 52.209-6

SECTION E

SECTION E ARTICLES APPLY IF THE PRICE OF THIS ORDER EXCEEDS \$100,000.

(This Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, WSRC will make their full text available. Reference Article A.37, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)

***E.1 AUTHORIZATION AND CONSENT (JUL 1995)**

FAR 52.227-1

***E.2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2000)**

DEAR 970.5227-5

***E.3 PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)**

FAR 52.222-2

***E.4 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)**

FAR 52.203-12

***E.5 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 1999)**

FAR 52.219-8

***E.6 INTEGRITY OF UNIT PRICES (OCT 1997)**

FAR 52.215-14

***E.7 ANTI-KICKBACK PROCEDURES (JUL 1995)**

FAR 52.203-7

***E.8 RESTRICTION ON CONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)**

FAR 52.203-6

***E.9 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT OVERTIME COMPENSATION-GENERAL (JUL 1995)**

FAR 52.222-4

***E.10 PREFERENCE FOR PRIVATELY-OWNED U.S. FLAG COMMERCIAL VESSELS (JUN 1997)**

FAR 52.247-64

***E.11 TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)**

FAR 52.223-14

SECTION F

SECTION F ARTICLES APPLY IF THE PRICE OF THIS ORDER EXCEEDS \$500,000.

F.1 DISPLACED EMPLOYEE HIRING PREFERENCE

A Definition. Eligible employee means a former or current employee of a contractor or subcontractor (1) who has been employed at a Department of Energy Defense Nuclear Facility as defined in Section 3163 of the National Defense Authorization Act for FY 1993 (Pub. L. 102-484) and the Interim Planning Guidance for Contractor Work Force Restructuring (DEC 1998) or other applicable Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time (hereinafter "Guidance"), (2) whose

employment at such a Defense Nuclear Facility has been involuntarily terminated (other than for cause) or who has been notified that they are facing termination, (3) who has also met the job attachment test as set forth in applicable Departmental Guidance, and (4) who is qualified for a particular position with the Contractor or, with retraining, can become qualified within the time and cost limits set forth in the Departmental Guidance.

- B The Subcontractor will assess the skills needed for the work to be performed under this contract and will provide to DOE Job Opportunity Bulletin Board System (JOBBS) all information relevant to the qualifications for all of the positions for which the Subcontractor has vacancies.
- C. Consistent with the Department of Energy Guidance as supplemented by the appropriate site work force restructuring plan, the Subcontractor agrees that it will provide to the extent practicable a preference in hiring to an eligible employee as defined other than for managerial positions (defined as those above the first level of supervision) for work to be performed under this subcontract.
- D. The Subcontractor will develop training programs designed to improve the qualifications of employees to fill vacancies with the Subcontractor and will take such training into account in assessing the qualifications of eligible employees.
- E. The requirements of this clause shall be included in subcontracts at any tier (except subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

(This Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, WSRC will make their full text available. Reference Article A.37, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)

***F.2 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000)**

DEAR 970.5226.2

***F.3 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 1999)**

FAR 52.219-9

SECTION G

SECTION G ARTICLES APPLY ONLY IF SPECIFIED IN THE ORDER, REGARDLESS OF ORDER PRICE

G.1 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION

- A. For the purpose of this Article,
- (1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and
 - (2) Employees include Subcontractor and lower-tier subcontractor employees.
- B. In performing work under this Subcontract, the Subcontractor and any lower-tier Subcontractor(s), shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral, but visible part of the Subcontractor's work planning and execution processes. The Subcontractor shall, in the performance of work, ensure that:
- (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those subcontractor and lower-tier subcontractor employees managing or supervising employees performing work.
 - (2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
 - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
 - (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
 - (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees,

the public, and the environment are protected from adverse consequences.

- (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
 - (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by WSRC and the Subcontractor. These agreed-upon conditions and requirements of the Subcontract are binding upon the Subcontractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work.
- C. The Subcontractor and any lower-tier Subcontractor(s), shall manage and perform work in accordance with Article G.2 or a documented Worker Protection Plan (WPP) that fulfills all conditions in paragraph B. of this Article to the degree specified in Article G.3 or G.4. as indicated applicable to this subcontract Documentation in the subcontract shall describe how the Subcontractor will:
- (1) Define the Work to be performed;
 - (2) Identify and analyze hazards associated with the work;
 - (3) Develop and implement hazard controls;
 - (4) Perform work within controls; and
 - (5) Provide feedback on adequacy of controls and continue to improve safety management.
- D. The subcontract shall describe how the Subcontractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to Subcontract requirements and funding limits while maintaining the integrity of the WPP. The subcontract shall also describe how the Subcontractor will measure WPP effectiveness.
- E. The Subcontractor shall submit to the WSRC Purchasing Representative documentation of its WPP for review and acceptance. The WSRC Purchasing Representative will establish dates for submittal, discussions, and revisions to the WPP. The WSRC Purchasing Representative will provide guidance on preparation, content,

review, and acceptance of the WPP.. On an annual basis, the Subcontractor shall review and update, for WSRC acceptance, its safety performance objectives, performance measures, and commitments consistent with, and in response to, Subcontract requirements, funding limits and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire WPP. Accordingly, the subcontract shall be integrated with the Subcontractor's business processes, as applicable to the Scope of Work contained in this subcontract, for work planning, budgeting, authorization, execution, and change control.

- F. The Subcontractor and any lower-tier Subcontractor(s), shall comply with, and assist WSRC in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the Article of this Subcontract on Laws, Regulations, and DOE Directives. The Subcontractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this Subcontract.
- G. The Subcontractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements including those specified in the subcontract. If the Subcontractor fails to provide resolution or, if at any time, the Subcontractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the WSRC Purchasing Representative may issue an order stopping work in whole or in part. Any stop work order issued by the WSRC Purchasing Representative under this Article (or issued by the Subcontractor to a lower-tier subcontractor shall be without prejudice to any other legal or contractual rights of WSRC. In the event that the WSRC Purchasing Representative issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the WSRC Purchasing Representative. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Article.
- H. WSRC shall hold the Subcontractor responsible for compliance with the ES&H requirements applicable to this Subcontract, including performance of work by any lower-tier subcontractor(s).

G.2 ENVIRONMENT, SAFETY, AND HEALTH COMPLIANCE - ALTERNATIVE I

(Compliance by the Subcontractor with the requirements of this Article G.2 shall satisfy any/all requirements of Article G.1, "Integration Of Environment, Safety and Health Into Work Planning And Execution", applicable to the scope of work contained in this Subcontract.)

- A. The Subcontractor, and any lower-tier Subcontractor(s), shall take all reasonable precautions in the performance of the work under this Subcontract to protect the environment, safety, and health of employees and members of the public. All work shall be performed to include lower-tier subcontracted work in compliance with all applicable WSRC/DOE environmental, safety, and health requirements, orders, and procedures including related reporting requirements. The WSRC Purchasing Representative shall notify the Subcontractor in writing of any noncompliance with the provisions of this Article and the corrective action to be taken. After receipt of such notice, the Subcontractor shall immediately take corrective action. In the event that the Subcontractor fails to take corrective action and comply with said WSRC/DOE regulations, requirements and procedures the WSRC Purchasing Representative may, without prejudice to any other legal or contractual rights of WSRC, issue an order stopping work in whole or in part. An order authorizing the resumption of work may be issued at the discretion of the WSRC Purchasing Representative. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Article.
- B. Prior to the start of work under this subcontract, the subcontractor shall provide to the WSRC Purchasing Representative a letter acknowledging a Corporate Safety and Health Policy and confirmation of compliance with WSRC procedures.
- C. The Subcontractor shall designate a safety and health professional or representative, as specified in the subcontract. The designation must include the person's qualifications and duties.

G.3 ENVIRONMENT, SAFETY, AND HEALTH COMPLIANCE - ALTERNATIVE II

(Compliance by the Subcontractor with the requirements of this Article G.3 shall satisfy any/all requirements of Article G.1, "Integration Of

Environment, Safety and Health Into Work Planning And Execution", applicable to the scope of work contained in this Subcontract.)

A. The Subcontractor and any lower-tier subcontractor(s) shall take all reasonable precautions in the performance of the work under this Subcontract to protect the environment, safety and health of employees and members of the public, and shall comply with OSHA and all other applicable federal, state and local regulatory requirements. The subcontractor and any lower-tier subcontractor shall comply with site-specific ES&H requirements when specified in the subcontract. The WSRC Purchasing Representative shall notify the Subcontractor in writing of any noncompliance with the provisions of this Article. After receipt of such notice, the Subcontractor shall immediately take corrective action. In the event that the Subcontractor fails to take corrective action and comply with said regulations and requirements, the WSRC Purchasing Representative may, without prejudice to any other legal or contractual rights of WSRC, issue an order stopping work in whole or in part. An order authorizing the resumption of work may be issued at the discretion of the WSRC Purchasing Representative. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Article.

B. Corporate Worker Protection Plan (WPP)

The Subcontractor shall possess and maintain a corporate Worker Protection Plan (WPP) which implements the OSHA requirements applicable to the normal course of the Subcontractor's business. Prior to the start of work under this Subcontract, the Subcontractor shall provide to the WSRC Purchasing Representative a copy of the WPP and sample Task Specific Plans (TSP) (based on a minimum of three tasks in the scope of work) for review and acceptance by the appropriate WSRC organization(s). NOTE: Subcontractor is responsible for conducting hazard analysis and documenting additional TSPs. Work under this Subcontract shall not commence until the WPP and TSPs have been accepted by WSRC. The Subcontractor shall provide a copy of the accepted WPP and TSP to any lower-tier Subcontractor(s). The Subcontractor's employees and the employees of any lower-tier Subcontractor(s), shall comply with the WPP and TSPs in the performance of the work under this Subcontract. The WPP shall meet the following minimum requirements:

- (1) Shall include management policies that provide for clear goals, responsibilities, authority, and accountability for meeting loss control objectives;
 - (2) Shall include the implementation of applicable local, state, federal, environment, safety and health requirements that are relevant to the scope of work;
 - (3) Shall provide employee guidance on internal engineering controls, precautions, and requirements on personal protective equipment (PPE) to minimize, control and/or prevent employee exposure to include equipment/property loss;
 - (4) Shall include Task Specific Plans that include hazard identification and control measures that provide for safe work practices and employee training (i.e., 1) Define Scope of Work, 2) Identify and Analyze Hazards, 3) Develop and Implement Controls, 4) Perform Work within Controls, 5) Provide Feedback, and Continuous Improvement.)
- C. Shall provide the STR copies of Material Safety Data Sheets for all chemicals brought to SRS prior to the initial use of such chemicals. In addition, the Subcontractor shall provide the STR with a current inventory on a monthly basis for chemicals stored on-site for thirty (30) or more days per EPCRA/CERCLA. All chemicals stored on-site shall follow NFPA storage guidelines.
- D. Shall designate a safety and health professional or representative as specified in the Subcontract. The designation must include the person's qualifications and duties and be documented in the Subcontractor's Worker Protection Plan.
- E. Environmental Compliance
The Subcontractor and any lower-tier subcontractor(s) shall comply with all applicable environmental protection laws, Executive Orders, ordinances, regulations, directives, and codes. Upon request, the Subcontractor shall submit an Environmental Compliance Plan (ECP) outlining the methods proposed to address the environmental requirements specified in the scope of work. The ECP shall specify the person responsible for ensuring the requirements are met.
- F. Site Reporting Requirements
The Subcontractor shall immediately notify the STR or WSRC Purchasing Representative of any unusual or off-normal event/condition. Further, the Subcontractor shall cooperate with any WSRC or DOE critique, analysis, or investigation for such events/conditions.

Unusual and off-normal events/conditions are as defined in DOE Manual 232.1-1A (DOE M 232.1-1A) and can include (but are not limited to):

- (1) Fires/explosions
- (2) Loss of radioactive material or spread of radioactive material or spread of radioactive contamination
- (3) Personnel contamination or exposures
- (4) Violation of procedures
- (5) Environmental release of radioactive materials, hazardous substances, regulated pollutants, oil spills, etc.
- (6) Loss damage, theft, or destruction to government property (including ecological resources)
- (7) Violation of Federal Motor Carrier Safety Regulations or Hazardous Material Regulations, and
- (8) Occupational injury or illness (including exposures to hazardous substances in excess of allowable limits).

In addition, the Subcontractor shall preserve conditions surrounding or associated with the event for continued investigation unless such actions interfere with establishing a safe condition.

G.4 ENVIRONMENT, SAFETY, AND HEALTH COMPLIANCE – ALTERNATIVE III

(Compliance by the Subcontractor with the requirements of this Article G.4 shall satisfy any/all requirements of Article G.1, "Integration Of Environment, Safety and Health Into Work Planning And Execution", applicable to the scope of work contained in this Subcontract.)

A. The Subcontractor and any lower-tier subcontractor(s) shall take all reasonable precautions in the performance of the work under this Subcontract to protect the environment, safety and health of employees and members of the public, and shall comply with OSHA and all other applicable federal, state and local regulatory requirements. The subcontractor and any lower-tier subcontractor shall comply with site-specific ES&H requirements when specified in the subcontract. The WSRC Purchasing Representative shall notify the Subcontractor in writing of any noncompliance with the provisions of this Article. After receipt of such notice, the Subcontractor shall immediately take corrective action. In the event that the Subcontractor fails to take corrective action and comply with said regulations and requirements, the WSRC Purchasing Representative may, without prejudice to any other legal or

contractual rights of WSRC, issue an order stopping work in whole or in part. An order authorizing the resumption of work may be issued at the discretion of the WSRC Purchasing Representative. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Article.

B. Compliance Statement/Corporate Worker Protection Plan (WPP)

The Subcontractor shall possess and maintain a corporate Worker Protection Plan (WPP) which implements the OSHA requirements applicable to the normal course of the Subcontractor's business. Prior to the start of work under this Subcontract, the Subcontractor shall provide to the WSRC Purchasing Representative a copy of the WPP for review and acceptance by the appropriate WSRC organizations. In lieu of submission of the WPP for review and acceptance, a compliance statement certifying that the above WPP is in effect may be acceptable, if it is determined by WSRC that work to be performed under this subcontract is non-hazardous. The Subcontractor's employees and the employees of any lower-tier subcontractor(s), shall comply with the WPP in the performance of the work under this Subcontract. Work under the Subcontract shall not commence until the above WPP/compliance statement has been received and accepted by WSRC. If only a compliance statement is required, as provided above, WSRC reserves the right to request and review the Subcontractor's WPP at any time during the performance of the subcontract. The Subcontractor shall provide a copy of the WPP to any lower-tier subcontractor(s). The WPP shall meet the following minimum requirements:

- (1) Shall include management policies that provide for clear goals, responsibilities, authority, and accountability for meeting loss control objectives;
- (2) Shall include the implementation of applicable local, state, federal, environment, safety and health requirements that are relevant to the scope of work;
- (3) Shall provide employee guidance on task hazards, engineering controls, precautions, and requirements on personal protective equipment (PPE) to minimize, control and/or prevent employee exposure to include equipment/property loss;

C. The Subcontractor shall provide the STR copies of Material Safety Data Sheets for all chemicals

brought to SRS prior to the initial use of such chemicals. In addition, the Subcontractor shall provide the STR with a current inventory on a monthly basis for chemicals stored on-site for thirty (30) or more days per EPCRA/CERCLA. All chemicals stored on-site shall follow NFPA storage guidelines.

- D. The Subcontractor shall designate a safety and health professional or representative as specified in the Subcontract. The designation must include the person's qualifications and duties and be documented in the Subcontractor's Worker Protection Plan.
- E. Environmental Compliance
The Subcontractor and any lower-tier subcontractor(s) shall comply with all applicable environmental protection laws, Executive Orders, ordinances, regulations, directives, and codes. Upon request, the Subcontractor shall submit an Environmental Compliance Plan (ECP) outlining the methods proposed to address the environmental requirements specified in the scope of work. The ECP shall specify the person responsible for ensuring the requirements are met.
- F. Site Reporting Requirements
The Subcontractor shall immediately notify the STR or WSRC Purchasing Representative of any unusual or off-normal event/condition. Further, the Subcontractor shall cooperate with any WSRC or DOE critique, analysis, or investigation for such events/conditions. Unusual and off-normal events/conditions are as defined in DOE Manual 232.1-1A (DOE M 232.1-1A) and can include (but are not limited to):
- (1) Fires/explosions
 - (2) Loss of radioactive material or spread of radioactive material or spread of radioactive contamination
 - (3) Personnel contamination or exposures
 - (4) Violation of procedures
 - (5) Environmental release of radioactive materials, hazardous substances, regulated pollutants, oil spills, etc.
 - (6) Loss damage, theft, or destruction to government property (including ecological resources)
 - (7) Violation of Federal Motor Carrier Safety Regulations or Hazardous Material Regulations, and
 - (8) Occupational injury or illness (including exposures to hazardous substances in excess of allowable limits).

In addition, the Subcontractor shall preserve conditions surrounding or associated with the

event for continued investigation unless such actions interfere with establishing a safe condition.

G.5 INSURANCE - LIABILITY TO THIRD PARTIES (PARTIAL IMMUNITY)

If the Subcontractor is partially immune from tort liability as a State agency or as a charitable institution, the following paragraph H shall be added to Article A.12:

- H. Notwithstanding paragraphs A and C of this Article
- (1) The WSRC does not assume any liability to third persons, nor will WSRC reimburse the Subcontractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract; and
 - (2) The Subcontractor need not provide or maintain insurance coverage as required by paragraph A of this Article, provided, that the Subcontractor may obtain any insurance coverage deemed necessary, subject to approval by WSRC as to form, amount, and duration. The Subcontractor shall be reimbursed for the cost of such insurance and, to the extent provided in paragraph C of this clause, for liabilities to third persons for which the Subcontractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount.

G.6 INSURANCE - LIABILITY TO THIRD PARTIES (TOTAL IMMUNITY)

If the Subcontractor is totally immune from tort liability as a State agency or as a charitable institution, substitute the following paragraphs A and B for paragraphs A through H of Article A.12:

- A. WSRC does not assume any liability to third persons, nor will WSRC reimburse the Subcontractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this order or any subcontract under this order.
- B. If any suit or action is filed, or if any claim is made against the Subcontractor, the cost and expense of which may be reimbursable to the Subcontractor under this order, the Subcontractor shall immediately notify WSRC and promptly furnish copies of all pertinent papers received by the Subcontractor. The Subcontractor shall, if required by WSRC, authorize WSRC

representatives to settle or defend the claim and to represent the Subcontractor in or take charge of any litigation. The Subcontractor may, at its own expense, be associated with the WSRC representatives in any such claim or litigation.

G.7 GENERAL EMPLOYEE TRAINING AND ANNUAL REFRESHER TRAINING FOR SUBCONTRACT EMPLOYEES

The following terms are applicable if performance of this Order will require the Subcontractor's employee(s) to perform work on SRS premises for more than ten (10) working days.

A. General Employee Training (GET)

(1) The Subcontractor shall inform his employees and the employees of his lower tier subcontractors and agents that it is the policy of Westinghouse Savannah River Company to adhere to the requirements contained in the DOE Order entitled "Personnel Selection, Qualification and Training Requirements," which requires any individual, employed either full or part-time at any DOE reactor or non-reactor facility to receive selected general training.

(2) Successful Completion Required

Said employees, referred to in the remainder of this document as "individual", must successfully complete the training known as "General Employee Training" (GET) as offered by the SRS. The GET sessions are given by a Savannah River Site authorized GET instructor. There are three categories of GET.

(i) Category 1 consists of viewing a video that lasts for one hour. This category is limited to delivery personnel, visitors, and other temporary personnel that require badged access to the general site and property protection areas and are typically on site greater than 10 days, but not consecutively, in a calendar year.

(ii) Category 2 consists of viewing a video and a written examination, and lasts for approximately two hours. This category would apply to visitors or other temporary personnel that require badged access to the general site and property protection areas and are on site greater than 10 days consecutively in a calendar year, and additional training is not required as determined by WSRC.

(iii) Category 3 consists of eight hours of training and includes instructor lecture along with audio and visual aids and a

written examination. This category applies to individuals who require badged access to the general site, property protection areas, or security controlled areas and additional training is required, as determined by WSRC.

(3) Successful Completion Defined

Successful completion occurs when the individual:

- (i) Is scheduled for GET,
- (ii) Attends the GET session,
- (iii) Obtains a test score of 70% or greater on the written examination, if required, (100% is the highest obtainable score), and
- (iv) Properly completes all documents (rosters, exam answer sheet, etc.).

(4) Unsuccessful Completion Defined

If the individual fails to successfully complete GET, the individual is given a failure notice and is to notify the Subcontract Technical Representative (STR) for rescheduling for remedial training or for a re-test. The individual will be allowed several chances to successfully complete the GET. Continued failure to successfully complete GET will result in resolution by the STR.

(5) Scheduling for GET

The STR shall direct the individual to the appropriate training center to attend the GET session. GET training is scheduled subject to demand.

(6) Records

GET records will be maintained by WSRC.

B. Annual Refresher Training

Refresher Training is required after an individual's initial successful completion of all categories of GET, regardless of the individual's present employer. Category 1 and Category 2 GET training must be repeated annually. For Category 3, successful completion of Consolidated Annual Training (CAT) is required. The subcontractor is responsible for scheduling its employees for this training. The STR may be contacted for assistance.

C. Upon providing proof of successful completion of GET either at another DOE facility, or while employed by a firm other than the Supplier under this Order, the employee will not be required to repeat this training.

G.8 SECURITY EDUCATION REQUIREMENTS FOR SUBCONTRACTORS

The following items are applicable if performance

of this subcontract will require the Subcontractor's employee(s) to receive a security badge.

A. Subcontractor Security Education Coordinator

(1) If this Order will require a force of more than thirty (30) subcontract employees receive a badge, then the Subcontractor/ shall provide to the WSRC Security Education Office, the name of it's representative appointed to administer it's Security Education Program. This representative shall be referred to as the Subcontractor Security Education Coordinator (SSEC).

(2) If this Order will require that less than thirty (30) subcontract employees receive a badge, then the WSRC Subcontract Technical Representative (STR) will perform the activities discussed in this Supplement.

B. Company Roster

The SSEC will be responsible for providing the STR with a roster of all subcontract personnel receiving a badge. At a minimum the data shall include name, social security number, work telephone number, clearance level and place where work is generally performed. This list shall be kept current and updated every sixty (60) days.

C. Initial Briefing

The SSEC will ensure that all subcontract personnel, regardless of clearance level, receive an Initial Security Briefing. This briefing is shown during General Employee Training. This briefing consists of a videotape shown during GET, or at the time of badging for those individuals not required to attend GET.

D. Comprehensive Briefing

If subcontract personnel have a clearance at the inception of this Order, or receive a clearance at any time during the course of the Order, the SSEC/STR will ensure that those subcontract employees receive a Comprehensive Briefing from WSRC.

E. Annual Refresher Briefing

The SSEC/STR shall ensure that all subcontract employees receive, at least once in a twelve (12) month period, an Annual Security Refresher briefing from WSRC. This briefing is provided during GET Refresher Training.

F. Foreign Travel Briefing

If a subcontract employee plans a trip to a sensitive country, whether on official business or for pleasure, the SSEC/STR is responsible for ensuring that the individual receives a Foreign Travel Briefing from WSRC before departing and a Debriefing upon return. The OPSEC Officer is responsible for these Briefings.

G. Badge Retrieval at Termination

The Subcontractor is responsible for ensuring that badges are returned or accounted for when a subcontract employee terminates employment or when an Order is completed. The employee must report to Employment Processing Center, for proper completion of out-processing and badge return. This effort should be coordinated with the WSRC STR.

H. Termination Briefing

When a subcontract employee terminates employment or is reassigned, the SSEC/STR will ensure that a Termination Briefing by WSRC is given and the appropriate forms are executed. Briefing materials and appropriate forms are provided by WSRC.

G.9 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

In the performance of this order, the Supplier is responsible for complying with the following requirements and for flowing down all requirements to lower-tier suppliers.

A. The Supplier ensures that access to UCNI is provided to only those individuals authorized for routing or special access (see DOE M 471.1-1, Chapter II). Supplier may provide access to material or data containing Unclassified Controlled Nuclear Information (UCNI) utilized in the performance of this Order only to employees who are citizens of the United States.

B. The Supplier ensures that matter identified as UCNI is protected in accordance with the instructions contained in DOE M 471.1-1, Chapter II. Any material or data containing UCNI which is stored on computer systems must be protected, and the protective measures and/or policies must be specified in a Computer Protection Plan approved by the WSRC Computer Security organization. Adherence to the Plan is required during the performance of this Order.

C. Material or data containing UCNI shall be disposed of in a manner as described in DOE M 471.1-1, Chapter II. At a minimum, UCNI matter must be destroyed by using strip cut shredders that result in particles of no more than 1/4-inch wide strips. Documents containing UCNI may also be disposed of in the same manner that is authorized for Supplier disposition of other classified material or data. If the above disposal methods are not available to the Supplier, the Supplier may return the UCNI matter to the STR for disposition, with the prior approval of the STR.

- D. The supplier shall report to the WSRC Security Office or the WSRC Purchasing Representative any incidents involving the unauthorized disclosure of UCNI.
- E. If performance of work under this order results in the generation of unclassified documents that contain UCNI, the Supplier shall have a sufficient number of trained UCNI review personnel to ensure the prompt and proper review of generated material or data to provide for the identification, marking, and proper handling of material or data determined to contain UCNI. The suppliers Reviewing Officials shall apply or authorize the application of UCNI markings to any unclassified matter that contains UCNI in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part C.
- F. If the supplier has a formally designated Classification Officer, the Classification Officer-
 - (1) Serves as a Reviewing Official for information under his/her cognizance;
 - (2) Trains and designates other Reviewing Officials in his/her organization, subordinate organizations, and lower-tier suppliers and maintains a current list of all Reviewing Officials; and
 - (3) May overrule UCNI determinations made by Reviewing Officials under his/her cognizance.
- G. If the supplier has no formally designated Classification Officer, the supplier submits a request for the designation of Reviewing Officials to the local Federal Classification Officer in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part B.

- (iii) Data-driven displays (e.g., spreadsheet charts) must be accompanied by data set used to generate them.

G.11 FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR

- A. For purposes of this clause, subcontractor means any subcontractor at any tier and the term "contracting officer" shall mean DOE contracting officer. When this clause is included in a subcontract, the term "contractor" shall mean subcontractor and the term "contract" shall mean subcontract.
- B. The subcontractor shall immediately provide WSRC written notice of any changes in the extent and nature of FOCI over the subcontractor which would affect the information provided in the Certificate Pertaining to Foreign Interests and its supporting data. Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to WSRC.
- C. In those cases where a subcontractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the Department of Energy shall consider proposals made by the subcontractor to avoid or mitigate foreign influences.
- D. If the contracting officer at any time determines that the subcontractor is, or is potentially, subject to FOCI, the subcontractor shall comply with such instructions as the contracting officer/WSRC shall provide in writing to safeguard any classified information or special nuclear material.
- E. The subcontractor agrees to insert terms that conform substantially to the language of this article including this paragraph (e) in all lower-tier subcontracts under this subcontract that will require access authorizations for access to classified information or special nuclear material. Additionally, the subcontractor shall require such subcontractors to submit a completed SF328, to the DOE Office of Safeguards and Security (marked to identify the applicable prime contract). Such subcontracts or purchase orders shall not be awarded until the subcontractor is notified that the proposed subcontractors have been cleared. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the DOE contracting officer.

G.10 SCIENTIFIC AND TECHNICAL INFORMATION

- A. Electronic submissions of technical reports will consist of two virus-free copies that are readable in the following formats:
 - (1) Text will be submitted in native software (that is compatible with the suite of document creation software currently used at SRS) (fonts identified) or in RTF (rich text format).
 - (2) Embedded objects and files that are linked to a document must be supplied as well, as follows:
 - (i) Raster images (for example, photographs) will be submitted as TIFF or EPS @ resolution>100 dpi.
 - (ii) Vector art (for example, line art) will be submitted as EPS images.

- F. Information submitted by the subcontractor or any affected lower-tier subcontractor as required pursuant to this clause shall be treated by WSRC/DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.
- G. The requirements of this clause are in addition to the requirement that a subcontractor obtain and retain the employee security clearances required by the subcontract. This clause shall not operate as a limitation on WSRC's rights, including its rights to terminate this subcontract.
- H. WSRC may terminate this subcontract for default either if the subcontractor fails to meet obligations imposed by this article, e.g., provide the information required by this article, comply with WSRC/DOE instructions about safeguarding classified information, or make this article applicable to lower-tier subcontractors, or if, in WSRC's judgment, the subcontractor creates an FOCI situation in order to avoid performance or a termination for default. WSRC may terminate this subcontract for convenience if the subcontractor becomes subject to FOCI and for reasons other than avoidance of performance of the subcontract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

G.12 COUNTERINTELLIGENCE

- A. The Subcontractor shall take all reasonable precautions in the work under this subcontract to protect WSRC/DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 5670.3, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.
- B. The Subcontractor shall comply with requirements established by the SR Counterintelligence Officer. The SR Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of Contractor employees traveling to foreign countries or interacting with foreign nationals. The Contractor shall be responsible for requesting defensive Counterintelligence briefings and debriefings of Contractor employees who have traveled to foreign countries or interacted with foreign nationals. The contractor shall

coordinate Counterintelligence Awareness training activities with the SR Counterintelligence Officer. The Contractor shall immediately report targeting, suspicious activity and other Counterintelligence concerns to the SR Counterintelligence Officer; and provide assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

G.13 CHANGES, EXTRAS AND SUBSTITUTIONS - (SUPPLEMENT)

NOTE: Inclusion of this Article supplements Article A.4, Changes.

- A. In the event of an emergency which WSRC determines endangers life or property, WSRC may use oral orders to Subcontractor for any work required by reason of such emergency. Subcontractor shall commence and complete such emergency work as directed by WSRC. Such orders will be confirmed by Change Notice.
- B. Pricing of Adjustments
When costs are a factor in any determination of an Order adjustment pursuant to the General Provision titled "Changes", or any other provision of this Order, such costs, upward or downward, shall be submitted by Subcontractor in the form of a lump sum proposal. The proposal shall include an itemized breakdown of all increases or decreases in at least the following detail:
 - (1) Direct Labor.
 - (i) Charges for labor furnished and used by Subcontractor shall be allowable for all manual classifications up to and including foremen. Charges shall not be included for superintendents, assistant superintendents, general foreman, surveyors, office personnel, timekeepers, an maintenance mechanics; these cost are recovered in the overhead and profit rates established by this Article. Labor rates used to calculate the costs shall be those rates in effect during accomplishment of the changes.
 - (ii) Direct labor costs shall include, in addition to direct payroll costs, payroll taxes, insurance, vacation allowance, subsistence, travel time, overtime premium and any other payroll additives required to be paid by

Subcontractor by law or labor agreement(s), e.g. Project Agreement, collective bargaining agreement(s), etc. Copies of certified pertinent payrolls shall be submitted to WSRC.

(2) Equipment.

- (i) Charges shall be allowable for the rental and operation of all Subcontractor's equipment furnished and used by Subcontractor, except for equipment or tools with a new cost at point of origin of Five Hundred Dollars or less each, which are deemed to be covered in the overhead and profit rates established by this Article.
- (ii) For Subcontractor -owned equipment, reasonable equipment charges shall be allowed in accordance with the following:
 - (a) Rental rates as agreed upon in the Order; or
 - (b) Rental rates not greater than seventy percent (70%) of Data Quest Blue Book daily rental rates applicable for the period of performance of the change; and
 - (c) Appropriately discounted to stand-by rates for idle time reasonably required.
- (iii) When the operated use of equipment is infrequent and, as determined by WSRC, such equipment need not remain at the work site continuously, charges shall be limited to actual hours of use. Equipment not operating but retained at the location of changes at WSRC's direction shall be charged at the standby rate.
- (iv) For Rental Equipment not owned by Subcontractor, charges will be computed on the basis of actual invoice cost.
- (v) For the cost of both rented and owned to be allowable, Subcontractor must justify and WSRC agree that the individual pieces of equipment are needed, are appropriate for the work, and that the mobilization costs are allocable to the change.

(3) Materials

Approved incurred costs for material incorporated into the changed Work or required for temporary facilities made necessary by the change shall be allowable at net cost delivered to the Jobsite.

(4) Overhead, Profit and All Other Costs

- (i) Overhead, profit and markup percentages included in the proposal, shall include, but not be limited to, insurance, use of small tools, incidental job burdens, and general home and field office expense. No percentages for overhead, profit or lower-tier markup will be allowed on employment taxes under FICA and FUTA.
- (ii) The percentages for overhead and profit will be negotiated and may vary according to the nature, extent and complexity of the Work involved. The maximum percentage for the overhead, profit and markup shall not exceed those shown below.
- (iii) For work subcontracted to a lower-tier by Subcontractor, the proposal submitted to WSRC shall only include one overhead percentage and one profit percentage in addition to Subcontractor's markup. No more than these three percentages will be allowed regardless of the number of tiers of Subcontractors. The lower-tier's percentage of overhead and profit shall not exceed those shown below.

<u>Subcontracted Work</u>	<u>Overhead</u>	<u>Profit</u>	<u>Markup</u>
\$1 to \$19,999	0%	0%	8.0%
\$20,000 to \$49,999	0%	0%	5.5%
\$50,000 and above	0%	0%	2.0%
<u>Direct Hire Work:</u>	<u>Overhead</u>	<u>Profit</u>	<u>Markup</u>
\$1 to \$19,999	10.0%	10.0%	0%
\$20,000 to \$49,999	7.5%	7.5%	0%
\$50,000 and above	6.75%	6.75%	0%

G.14 RIGHT OF FIRST REFUSAL OF EMPLOYMENT

The scope of work described herein as currently being performed by Buyer (WSRC/BSRI) employees and award of an order may displace these workers. Consistent with section 3161 of the National Defense Authorization Act (PL 102-484), if the Seller needs to hire additional employees beyond those already part of its existing work force as of the date of this solicitation in order to satisfy the performance requirements set forth by the scope of work in this solicitation, the Seller must first consider the employment of qualified displaced DOE contractor employees who meet the 3161 Job Attachment Test prior to using other avenues to fill that employment need. At the time of award of the Order, the Buyer shall make available to the Seller a list of displaced employees with sufficient information to allow for contact. This requirement shall be included in the resultant Order and be in effect from the date of

award of the Order.

G.15 COPYRIGHTS FOR WSRC DIRECTED TECHNICAL PERFORMANCE

Subcontractor shall cause its employee(s) to assign to WSRC all rights under the copyright in all works of authorship prepared at the direction of WSRC during the term of this Order. Subcontractor shall include terms in its arrangements with its employee(s) to require such assignments to WSRC. To the extent that such works of authorship are considered to be works made for hire for Subcontractor, Subcontractor agrees to assign and does hereby assign all of its rights under the copyrights in such works to WSRC or the U. S. Government.

G.16 NON-PROLIFERATION

If any item(s) provided under this Order are foreign made and will require importation into the United States to fulfill the requirements under this Order, the Supplier represents that delivery of such items will not violate any non-proliferation laws, rules or regulations of the country or countries from which the materials are to be exported.

(This Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, WSRC will make their full text available. Reference Article A.37, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)

***G.17 CLASSIFICATION/ DECLASSIFICATION (SEP 1997)**

DEAR 952.204-70

***G.18 FILING OF PATENT APPLICATIONS- CLASSIFIED SUBJECT MATTER (APR 1984)**

FAR 52.227-10

***G.19 RIGHTS IN DATA-GENERAL (JUN 1987)**

FAR 52.227-14, as modified pursuant to DEAR 927.409(a) (1)

***G.20 RIGHTS IN DATA-ALT II (JUN 1987)**

FAR 52.227-14, as modified pursuant to DEAR 927.409(a) (1)

***G.21 RIGHTS IN DATA-ALT III (JUN 1987)**

FAR 52.227-14, as modified pursuant to DEAR 927.409(a) (1)

***G.22 ADDITIONAL DATA REQUIREMENTS (JUN 1987)**

FAR 52.227-16

***G.23 ORGANIZATIONAL CONFLICT OF INTEREST (JUN 1997)**

DEAR 952.209-72

***G.24 SERVICE CONTRACT ACT OF 1965 AS AMENDED (MAY 1989)**

FAR 52.222-41

***G.25 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)**

FAR 52.222-42

***G.26 SERVICE CONTRACT ACT (SCA) MINIMUM WAGES AND FRINGE BENEFITS (MAY 1989)**

FAR 52.222-47

***G.27 COST ACCOUNTING STANDARDS- EDUCATIONAL INSTITUTION (APR 1998)**

FAR 52.230-5 (Except paragraph (b), which is deleted)

***G.28 ADMINISTRATION OF COST ACCOUNTING STANDARDS (NOV 1999)**

FAR 52.230-6

***G.29 PRIVACY ACT (APR 1984)**

FAR 52.224-1 and 52.224-2

***G.30 DUTY-FREE ENTRY (FEB 2000)**

FAR 52.225-8

***G.31 PREFERENCE FOR U.S. FLAG AIR CARRIERS (JAN 1997)**

FAR 52.247-63

***G.32 WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)**

FAR 52.222-20

***G.33 PRINTING (DEC 2000)**

DEAR 970.5208-1

***G.34 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)**

FAR 52.215-10

***G.35 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA-- MODIFICATIONS (OCT 1997)**

FAR 52.215-11