

**GENERAL PROVISIONS
 FOR FIXED-PRICE ORDERS
 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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Article Numbers may have changed from the previous revision. Change Bar indicates new article, a change in application, or that text of Article has changed from Revision 14.

** Incorporated by reference to appropriate FAR clause (see <http://www.arnet.gov/far>) and DEAR clause (<http://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. The Contracting Officer is the Government Official who is authorized to execute, administer, and terminate the contract, and includes the authorized representatives thereof, when such individuals are acting within the limits of their authority as delegated by the Contracting Officer.
- 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 Supplier and its Subcontractor under this Order.
- F. "Subcontract" shall mean any Purchase Order entered into by the Supplier or subcontractor calling for supplies and/or services required for performance, order modification, or subcontract.
- G. "Subcontractor" shall mean any subcontractor or supplier of any tier who supplies goods and/or

services to Supplier in connection with Supplier's obligations under this Order.

- H. "Supplier" shall mean the person or organization entering into this Order with WSRC.
- I. "Supplies" shall mean equipment, components, parts and materials to be provided by Supplier and its Subcontractors pursuant to this Order.
- J. "Vendor Data" shall mean any and all information, data, and documentation to be provided by Supplier and its Subcontractors under this Order.
- K. "Work" shall mean Supplies, Services, and Vendor Data provided by Supplier 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 order, 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 in the Westinghouse Savannah River Company (WSRC) purchase order or subcontract apply notwithstanding any different or additional terms and conditions which may be submitted or proposed by Supplier, 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. Supplier shall perform all Work pursuant to this Order as an independent contractor. If any part of the Work is subcontracted, Supplier 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 Supplier or any Subcontractor.

A.3 SUBCONTRACTING

- A. Supplier shall not subcontract all or substantially all of the Work without the prior written approval of WSRC. This provision shall not apply to purchases of standard commercial articles or raw materials on which Supplier shall perform further work.
- B. Supplier shall select Subcontractors on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of this Order.

A.4 CHANGES, EXTRAS AND SUBSTITUTIONS

- A. WSRC may at any time, by a written change notice from the WSRC Procurement and Materials Management 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 (1) the

contract price, (2) the time of performance or delivery schedule or both; and (3) other affected terms of this Order, and shall modify this Order accordingly. Any proposal by Supplier 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 Supplier 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 Supplier'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 Supplier from proceeding with this Order as changed.

- B. Any changes, extras or additional work made or performed by Supplier without the prior written approval of the WSRC Procurement and Materials Management Department shall be at the sole risk and expense of Supplier, there being no financial recourse against WSRC or the Government whatsoever.
- C. Supplier 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.

A.5 APPROVALS

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

A.6 DELIVERY AND PAYMENT

- A. Supplier shall work such hours, as may be necessary to meet the Order delivery date(s), or any duly authorized extensions thereof, at no increase in the price of this Order.
- B. Unless otherwise provided in this Order, delivery shall not be made more than 15 days prior to the delivery dates specified herein and WSRC may return earlier deliveries at Supplier's risk and expense. Supplier shall comply with the delivery schedule provided in this order.
- C. Unless otherwise specified in this Order, a separate invoice shall be issued upon each delivery of Supplies or completion of Services,

and shall be payable by WSRC upon receipt and acceptance of Supplies or completion of Services and receipt by WSRC of a correct invoice therefore. Credit and discount periods shall be computed from the date such invoice is so payable to the date WSRC's check is mailed or, for Electronic Funds Transfer (EFT), the specified payment date. Unless freight and other charges are itemized, the discount will be taken on the full amount of invoice.

- D. Payment Withheld - Vendor Data. If this Order requires the submittal of Vendor Data, and if such Vendor Data, or any part thereof, is not delivered within the time specified by this Order, or is deficient upon delivery, WSRC may, until such Vendor Data is delivered or deficiencies are corrected, without limiting any of its other rights or remedies, withhold payments not to exceed 20% of the Order price to the Supplier.
- E. Notwithstanding anything herein, WSRC shall be entitled at any and all times to set off against any amounts payable at any time by WSRC hereunder any amount owing from Supplier to WSRC under this Order or other orders with Supplier.
- F. Overpayments. If Supplier becomes aware of a duplicate invoice payment or that WSRC has otherwise overpaid on an invoice payment, the Supplier 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, Supplier 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 Supplier's EFT Information. Supplier is required to provide WSRC with the information required to make payment by EFT. Supplier 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 Supplier's EFT information. In the event that the EFT information changes, Supplier 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 Supplier. 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, Supplier 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 Supplier's invoice is due, WSRC will issue instructions to its bank to transfer payment to Supplier, and will also send a FAX to Supplier 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 Supplier'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 Supplier'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

Supplier 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. Supplier 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 Supplier's or a Subcontractor's facility by any person, firm, or corporation which has supplied equipment, material, services or data, Supplier agrees promptly, on demand of WSRC and at Supplier's expense, to take any and all action necessary to cause any such lien to be released or discharged therefrom. Supplier 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) Supplier 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, Supplier 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) Supplier 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 Supplier 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 Supplier shall thereafter look solely to such assignee for performance of WSRC's obligations. Supplier 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 WORKMANSHIP AND MATERIALS

- A. Unless this Order specifies otherwise, the Supplier represents that all workmanship will be first class and the supplies and components, including any former Government property identified in this Order are new, including recycled (not used or reconditioned) in conformance with industry standards and are not of such age or so deteriorated as to impair their usefulness or safety. The Supplier shall not provide material or equipment that contains material that is known to be suspect or counterfeit. If the Supplier believes that furnishing used or reconditioned supplies or components will be in the Government's interest, the Supplier shall so notify the WSRC Purchasing Representative in writing. The Supplier's notice shall include the reasons for the request along with a proposal for any consideration to WSRC if WSRC authorizes the use of used or reconditioned supplies or components.
- B. Where items are referred to in the specifications as "equal to" any particular standard, WSRC shall decide the question of equality.
- C. If required elsewhere in this Order, Supplier shall submit for approval samples of, or test results on, any materials proposed to be incorporated in the Work before making any commitment for the purchase of such materials. Such approval shall not relieve Supplier of any of its obligations hereunder.
- D. All work under this Order shall be performed in a skillful and workmanlike manner. The Supplier agrees to utilize only experienced, responsible and capable employees, to include lower-tier subcontractors, in the performance of the work. WSRC may require that the Supplier remove from the job, employees to include lower-tier subcontractors, who endanger persons or property, or whose continued employment under this Order is inconsistent with the interests of security or safety at the Savannah River Site.

A.11 WARRANTY

- A. Supplier warrants that the Supplies shall be free from defects in material and workmanship, of the most suitable grade of their respective kinds for the purpose, and comply with all requirements set forth in this Order, until one year after first placed into service by WSRC, or three years after acceptance, whichever first occurs. Supplier shall correct any nonconformity with this warranty at its sole expense, as directed by WSRC, by promptly: (i) repairing or replacing

the nonconforming Supplies specified (and correcting any plans, specifications, or drawings affected); (ii) furnishing WSRC any materials, parts, and instructions necessary to correct or have corrected the nonconformity, or (iii) paying to WSRC a portion of the Order price as is equitable under the circumstances.

- B. Supplier warrants that the Services shall reflect the highest standards of professional knowledge and judgment, shall be free from defects in workmanship, and shall be in compliance with all requirements of this Order, until one (1) year from the completion of the Services. Supplier shall correct any nonconformity with this warranty at its sole expense, as directed by WSRC, by promptly (i) reperforming the nonconforming Services or (ii) paying to WSRC a portion of the Order price as is equitable under the circumstances.
- C. If Supplier fails to perform its obligations promptly under this article, WSRC may perform, or have performed, such obligations and Supplier shall pay WSRC all charges occasioned thereby.
- D. The warranty with respect to corrected Supplies or Services shall be subject to the same terms as the warranty provided for in paragraphs A and B of this article. The warranty for other than corrected or replaced Supplies or Services shall continue until the expiration of such period plus a period equal to the time elapsed between the discovery of the nonconformity and its correction.
- E. Unless installation is an element of the Work, Supplier shall not be obligated under this article for the costs of removal or reinstallation of any Supplies furnished or items Serviced hereunder from the location of their installation, or for the costs of removal or reinstallation of structural parts or items not furnished by Supplier hereunder. Supplier shall in any event bear all packing, packaging, and shipping costs from the place of delivery to the Supplier's plant and return to the place of delivery, and shall bear all risk of loss or damage for the items upon which Services have been performed or Supplies while in transit.
- F. Unless decontamination is an element of the Work, in the event that Supplier's costs in correcting any nonconformity under this article are increased solely because the Supplies furnished or items Serviced hereunder must be decontaminated to the level specified in the definition of "radiation area" in 10 CFR 20.202, this Order price shall be equitably adjusted to reflect such additional costs after prompt written notification thereof by Supplier to WSRC.

- G. The provision of this article shall apply notwithstanding inspection, acceptance, or any other provision of this Order, and shall not limit any other of WSRC's rights and remedies.
- H. Latent Defects. In the event the Supplier becomes aware of any latent defect(s) in any item(s) furnished under this Order, the Supplier shall promptly notify the WSRC Procurement Representative. This notice shall provide at a minimum the following information:
 - (1) full description of the item(s);
 - (2) manufacturer, model and/or part number;
 - (3) complete description of the latent defect
 - (4) impact of the defect on the operation of the item(s);
 - (5) action(s) to be taken by WSRC relative to return, re-fit, repair, etc.;
 - (6) date of purchase by WSRC; and,
 - (7) applicable WSRC Order number.

A.12 SUPPLIER'S INSPECTION REQUIREMENTS

Supplier is responsible for performing, or having performed, all inspections and tests necessary to substantiate that the Supplies or Services furnished under this Order conform to Order requirements, including any applicable technical requirements for specified manufacturers' parts. This article takes precedence over any WSRC inspection and testing required in the specifications, except for specialized inspections or tests specified to be performed solely by WSRC.

A.13 GOVERNMENT PROPERTY

NOTE: If the total acquisition cost of all Government property furnished under this Order is \$100,000 or less, Paragraph E of this Article is deleted and the following is substituted in lieu thereof:

- E. The Supplier shall be responsible and accountable for all Government property provided under this Order. The Supplier shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for WSRC inspection at all reasonable times. The Supplier shall provide an annual inventory listing identifying all Government Property associated with this Order. The inventory shall include the following information for each property item: ID number, description, manufacturer, model number, serial number, acquisition value, condition, location, and primary user.

A. Government Property

- (1) WSRC shall deliver to the Supplier, for use in connection with and under the terms of

this Order, the Government property described elsewhere in the Order or specifications together with any related data and information that the Supplier may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government property").

- (2) The delivery or performance dates for this Order are based upon the expectation that Government property suitable for use (except for property furnished "as-is") will be delivered to the Supplier at the times stated in the Order or if not so stated, in sufficient time to enable the Supplier to meet the Order delivery or performance dates.
- (3) If Government property is received by the Supplier in a condition not suitable for the intended use, the Supplier shall, upon receipt of it, notify the WSRC Purchasing Representative detailing the facts, and, as directed by the WSRC Purchasing Representative and at WSRC's expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Supplier, the WSRC Purchasing Representative shall make an equitable adjustment as provided in paragraph H of this article.
- (4) If Government property is not delivered to the Supplier by the required time, the WSRC Purchasing Representative shall, upon the Supplier's timely written request, make a determination of the delay, if any, caused the Supplier and shall make an equitable adjustment in accordance with paragraph H of this article.

B. Changes in Government Property

- (1) The WSRC Purchasing Representative may, by written notice,
 - (i) Decrease the Government property provided or to be provided under this Order, or
 - (ii) Substitute other Government property for the property to be provided by WSRC, or to be acquired by the Supplier for the Government, under this Order. The Supplier shall promptly take such action as the WSRC Purchasing Representative may direct regarding the removal, shipment, or disposal of the property covered by such notice.
- (2) Upon the Supplier's written request, the WSRC Purchasing Representative shall

make an equitable adjustment to the Order in accordance with paragraph H of this article, if WSRC has agreed in the order to make the property available for performing this Order and there is any -

- (a) Decrease or substitution in this property pursuant to subparagraph B (1) above; or
- (b) Withdrawal of authority to use this property, if provided under any contract or lease.

C. Title in Government Property

- (1) The Government shall retain title to all Government property.
- (2) All Government property and all property acquired by the Supplier, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this article. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property as being attached to any real property.
- (3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the Supplier for WSRC under this Order shall pass to and vest in the Government when its use in performing this Order commences or when WSRC has paid for it, whichever is earlier, whether or not title previously vested in the Government.
- (4) If this Order contains a provision directing the Supplier to purchase material for which WSRC will reimburse the Supplier as a direct item of cost under this Order -
 - (i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and
 - (ii) Title to all other material shall pass to and vest in the Government upon -
 - (a) Issuance of the material for use in Order performance;
 - (b) Commencement of processing of the material or its use in Order performance; or
 - (c) Reimbursement of the cost of the material by WSRC, whichever occurs first.

D. Use of Government Property

The Government property shall be used only for performing this Order, unless otherwise provided

in this Order or approved by the WSRC Purchasing Representative.

E. Property Administration

- (1) The Supplier shall be responsible and accountable for all Government property provided under this Order and shall comply with DOE Property Management Regulations 41 CFR 109, as in effect on the date of this Order.
- (2) The Supplier shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR and Subpart 945.5 of the DEAR. The Supplier shall provide an annual inventory as required in Federal Property Regulation 41 CFR 101 and the Department of Energy Property Management Regulation 41 CFR 109.
- (3) If damage occurs to Government property, the risk of which has been assumed by WSRC or the Government under this Order, WSRC shall replace the items or the Supplier shall make such repairs as WSRC directs. However, if the Supplier cannot effect such repairs within the time required, Supplier shall dispose of the property as directed by the WSRC Purchasing Representative. When any property for which WSRC is responsible is replaced or repaired, the WSRC Purchasing Representative shall make an equitable adjustment in accordance with paragraph H of this article.
- (4) The Supplier understands that the Order price does not include any amount for repairs or replacement for which WSRC is responsible. Repair or replacement of property for which the Supplier is responsible shall be accomplished by the Supplier at its own expense.

F. Access

WSRC and the Government and all their designees have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

G. Risk of loss

Unless otherwise provided in this Order, the Supplier assumes the risk of and shall be responsible for, any loss or destruction of, or damage to Government property upon its delivery to the Supplier or upon passage of title to the Government under paragraph C of this article. However, the Supplier is not responsible

for reasonable wear and tear to Government property or for Government property properly consumed in performing this Order.

H. Equitable Adjustment

When this article specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes article. When appropriate, the WSRC Purchasing Representative may initiate an equitable adjustment in favor of WSRC. The right to an equitable adjustment shall be the Supplier's exclusive remedy. WSRC and the Government shall not be liable to suit for breach of contract for

- (1) Any delay in delivery of Government property;
- (2) Delivery of Government property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government property; or
- (4) Failure to repair or replace Government property for which WSRC or the Government are responsible.

I. Final Accounting and Disposition of Government Property

Upon completing this Order, or at such earlier dates as may be fixed by the WSRC Purchasing Representative, the Supplier shall submit, in a form acceptable to the WSRC Purchasing Representative, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this Order or delivered to WSRC. The Supplier shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the WSRC Purchasing Representative. The net proceeds of any such disposal shall be credited to the Order price or shall be paid to WSRC as the WSRC Purchasing Representative directs.

J. Abandonment and Restoration of Supplier's Premises

Unless otherwise provided herein, WSRC -

- (1) May abandon any Government property in place, at which time all obligations of WSRC and the Government regarding such abandoned property shall cease; and
- (2) Has no obligation to restore or rehabilitate the Supplier's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon Order completion). However, if the Government property is withdrawn or is unsuitable for the intended use, or if other

Government property is substituted, then the equitable adjustment under paragraph H of this article may properly include restoration or rehabilitation costs.

K. Communications

All communications under this article shall be in writing.

L. Overseas Orders

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

A.14 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 Supplier 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, Supplier 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. Supplier 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.15 FEDERAL, STATE, AND LOCAL TAXES

- A. (1) "After-imposed Federal tax" as used in this article, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the Order date but whose exemption was later revoked or reduced during this Order period, on the transactions or property covered by this Order that the Supplier is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the Order date. It does not include social security tax or other employment taxes.
- (2) "After-relieved Federal tax" as used in this article, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this Order, but which the Supplier is not required to pay or bear, or for which the Supplier obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the Order date.

- (3) "All applicable Federal, State, and local taxes and duties" as used in this article, means all taxes and duties, in effect on the Order date, that the taxing authority is imposing and collecting on the transactions or property covered by this Order.
- (4) "Order date" as used in this article means the date set for bid opening or, if this is a negotiated order or modification, the effective date of this Order or modification.
- B. Supplier shall not collect an increment for South Carolina sales or use tax from WSRC for the materials and/or services provided under this Order beyond such taxes paid by the Supplier to its suppliers.
- C. The Order price includes all applicable Federal, State, and local taxes and duties. (See paragraph B. above.)
- D. The Order price shall be increased by the amount of any after-imposed Federal tax, provided Supplier warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the Order price, as a contingency, reserve or otherwise.
- E. The Order price shall be decreased by the amount of any after-relieved Federal tax.
- F. The Order price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that Supplier is required to pay or bear, or does not obtain a refund of, through Supplier's fault, negligence, or failure to follow instructions of WSRC.
- G. No adjustment shall be made in the Order price under this article unless the amount of the adjustment exceeds \$100.
- H. Supplier shall promptly notify WSRC of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the Order price and shall take appropriate action as WSRC directs.

A.16 TERMINATION FOR CONVENIENCE OF WSRC

WSRC may, by written notice, terminate this Order, in whole or in part, when it is in WSRC's interest to do so. If this Order is so terminated, the rights, duties, and obligation of the parties, including compensation to Supplier, shall be in accordance with Part 49 of the FAR as supplemented or modified by Part 949 of the DEAR in effect on the date of this Order.

A.17 DISPUTES

- A. 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 order.
- 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 Supplier shall proceed diligently with performance of all terms of this Order. The Supplier's consent to so proceed shall not restrict or otherwise affect the Supplier's right to contest any claim.

A.18 PRICING OF ADJUSTMENTS

When costs are a factor in any determination of an Order price adjustment pursuant to the "Changes, Extras, and Substitutions" article or any other provisions of this Order, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the FAR as supplemented or modified by DEAR Part 931, in effect on the date of this Order.

A.19 COMPLIANCE

- A. Except as otherwise directed by WSRC, Supplier shall procure, without additional expense 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.

- B. Supplier warrants that any and all Work performed 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.
- C. Supplier 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.20 RIGHTS TO PROPOSAL DATA

Except for the technical data contained on those pages of Supplier's proposal which are specifically identified in the Order with specific reference to this article and asserted by Supplier 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.21 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 will be taken on the part of all WSRC subcontractors, vendors and suppliers to insure adherence to such laws.

A.22 DEFAULT

- A. (1) WSRC may, subject to paragraphs C and D below, by written notice of default to Supplier, terminate this Order in whole or in part if Supplier fails to:
 - (i) Deliver the Supplies or to perform the Services within the time specified in this Order or any extension;
 - (ii) Make progress, so as to endanger performance of this Order (but see subparagraph A (2) below); or

- (iii) Perform any of the other provisions of this Order (but see subparagraph A (2) below).
- (2) WSRC's right to terminate this Order under subdivisions (1)(ii) and (1)(iii) above, may be exercised if Supplier does not cure such failure within 10 days (or more if authorized in writing by WSRC) after receipt of the notice from WSRC specifying the failure.
- B. If WSRC terminates this Order in whole or in part, it may acquire, under the terms and in the manner WSRC considers appropriate, supplies or services similar to those terminated, and Supplier will be liable to WSRC for any excess costs for those supplies or services. However, Supplier shall continue the Work not terminated.
- C. Except for defaults of Subcontractors at any tier, Supplier shall not be liable for any excess costs if the failure to perform this Order arises from causes beyond the control and without the fault or negligence of Supplier. Examples of such causes include
 - (1) Acts of God or of the public enemy,
 - (2) Acts of the Government in either its sovereign or contractual capacity,
 - (3) Fires,
 - (4) Floods,
 - (5) Epidemics,
 - (6) Quarantine restrictions
 - (7) Strikes,
 - (8) Freight embargoes, and
 - (9) Unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of Supplier.
- D. If the failure to perform is caused by the default of a Subcontractor at any tier, and if the cause of the default is beyond the control of both Supplier and the Subcontractor and without the fault or negligence of either, Supplier shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for Supplier to meet the required delivery schedule.
- E. If this Order is terminated for default, WSRC may require Supplier to transfer title to the Government and deliver to WSRC, as directed by WSRC, any (1) completed Supplies, and (2) partially completed Supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this article) that Supplier has specifically produced or acquired for the terminated portion of this Order. Upon direction of WSRC, Supplier shall also

protect and preserve property in its possession in which WSRC or the Government has an interest.

- F. WSRC shall pay the Order price for completed Supplies delivered and accepted. Supplier and WSRC shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes article. WSRC may withhold from these amounts any sum it determines to be necessary to protect itself against loss because of outstanding liens or claims of former lien holders.
- G. If, after termination, it is determined that Supplier was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of WSRC.
- H. The rights and remedies of WSRC in this article are in addition to any other rights and remedies provided by law or under this Order.

A.23 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

- A. Supplier 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 Supplier of any responsibility or liability for the safety of WSRC, Government, Supplier, or subcontractor personnel or property.
- D. Supplier 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 Supplier shall not place the legend or any other restrictive legend on any data which
 - (i) Supplier or any Subcontractor previously delivered to WSRC or the Government without limitations or
 - (ii) Should otherwise be delivered without limitations.
- F. Supplier 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 materials/chemicals.

A.24 PATENTS AND COPYRIGHTS

NOTE: This article shall apply only if Article C.4 of these General Provisions is not applicable.

- A. Supplier shall, at its own expense, defend any suit or proceeding brought against WSRC and/or its vendors, mediate and immediate, so far as based on any allegation that any goods, material, equipment, device, item, method, or article (hereinafter referred to as "Product") or any part thereof furnished hereunder constitutes an

infringement of any claim of any patent or violation of any copyright.

- B. In case the product or any part thereof furnished hereunder is held, in any suit or proceeding so defended to constitute infringement and its use is enjoined, Supplier shall, at its option and its own expense, in a timely manner either (i) procure for WSRC and its vendors, mediate and immediate, the right to continue using product or part thereof, or (ii) replace it with a substantially equivalent noninfringing product, or (iii) modify it so it becomes noninfringing but is substantially functionally equivalent.

A.25 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.26 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.27 CONFIDENTIALITY OF INFORMATION

- A. To the extent that the work under this Order requires that the Supplier be given access to confidential or proprietary business, technical or financial information belonging to the Government, WSRC or other companies, the Supplier 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 Supplier, is in public domain;
 - (2) Information which is published after receipt thereof by the Supplier or otherwise becomes part of the public domain through no fault of the Supplier;
 - (3) Information which the Supplier 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 Supplier can demonstrate was received by it from a third party who did not require the Supplier to hold it in confidence.
- B. The Supplier 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

Supplier's organization directly concerned with the performance of the contract.

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

A.28 WORKPLACE SUBSTANCE ABUSE PROGRAMS

A. Fitness for Duty

- (1) (i) The Supplier 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 Supplier employee who is found in violation of the policy may be removed or barred from the site.
- (ii) The Supplier 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 advice 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 Supplier 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 Supplier 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 Supplier 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 Supplier 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 Supplier's or Subcontractor's employee will not be badged, shall be issued a temporary pass, and will be escorted offsite by a Supplier's or Subcontractor's Representative.
- ##### **B. Suitability for Employment**
- (1) Supplier employees, including employees of lower-tier subcontractors, who are to be badged to permit Savannah River Site access must successfully complete a Suitability for Employment process. As part of this process, the Supplier 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 Supplier's employee subsequently fails to successfully complete the background investigation, he Supplier agrees to promptly remove such individual from the site and to return the badge to the WSRC Subcontractor Badging Office.
 - (3) Supplier agrees to advise its employees of the above requirement prior to assignment to the Savannah River Site and to maintain documentation that such advice has been

given.

A.29 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 or 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.30 OZONE DEPLETING SUBSTANCE

Without limiting any of the other Articles herein, Supplier warrants that all of the supplies furnished under this Order have been completely and accurately labeled pursuant to the requirements of 40 CFR Part 82, "Protection of Stratospheric Ozone", or that such supplies do not require such labeling.

A.31 REPORTING OF ROYALTIES

If any royalty payments are directly involved in this Order or are reflected in the Order price, Supplier 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 Supplier's duty to safeguard all classified information, special nuclear material, and other DOE/WSRC property in its possession. The Supplier 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 Supplier's possession in connection with the performance of work under this Order. Except as otherwise expressly provided in this Order, the Supplier shall, upon completion or termination of this Order, transmit to WSRC any classified, unclassified sensitive, and proprietary matter in the possession of the Supplier or any person under the Supplier's control in connection with performance of this Order. If retention by the Supplier of any classified, unclassified sensitive, and proprietary matter in the Supplier's possession is required after the completion or termination of the Order and such retention is approved by the WSRC Purchasing Representative, the Supplier shall complete a certificate of possession to be furnished to WSRC specifying the classified, unclassified sensitive, and proprietary matter in the Supplier'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 Supplier 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 Supplier 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 Supplier or any person under the Supplier's control in connection with work under this Order, may subject the Supplier, 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 Supplier shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this Order.

A.33 SUPPLIER'S LIABILITY FOR FINES AND PENALTIES

- A. Supplier is liable to WSRC for fines and penalties assessed by any governmental entity against WSRC or DOE as a result of Supplier's failure to perform its work under the Order in compliance with the requirements of the Order.
- B. Supplier 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 WORK ON WSRC, GOVERNMENT OR OTHER PREMISES

- A. As to the Work to be done or performed by Supplier on premises owned or controlled by WSRC, the Government, or the premises of other WSRC subcontractors, Supplier assumes the entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any injury including death, or damage to property, sustained in connection with or to have arisen out of the acts or omissions of Supplier or its Subcontractors, agents, or employees. Supplier shall indemnify and hold harmless the Government and WSRC from and against any and all claims, demands, actions, causes of action including those brought by an employee of the Supplier or a State Industrial Insurance subcontractor under a Workers/ Workmen's Compensation Act or statute, suits, damages, expenses including attorney fees and liabilities whatsoever resulting from or arising in any manner on account of or by reason of any injury to or death of any person or any damage to or loss of property attributable directly or indirectly to the acts or omissions of Supplier or its Subcontractors, agents, or employees arising out of, or in any way connected with the performance of this Order, whether or not caused in any way by some act or omission, negligence or otherwise, of WSRC or the Government; provided however, that the Supplier's duty to indemnify shall not arise if such injury, death, destruction or loss is caused by the sole negligence of WSRC or the Government. Nothing in the foregoing shall be construed to require Supplier to indemnify and save harmless the Government and WSRC from any liability arising out of or resulting from a nuclear incident. To the extent necessary to execute the foregoing indemnification and as permitted by law, Supplier specifically waives any and all immunity provided by any industrial insurance or Workers/ Workmen's Compensation Act or statute.
- B. When Supplier shall perform any part of the Work on the premises of the WSRC or the

Government during the performance of this Order, the Supplier shall have in force and effect, policies of insurance conforming to the terms set forth in Paragraph C of this Article.

- C. (1) The Supplier shall procure and thereafter maintain at its own expense, the following insurance:
- (i) Workers' Compensation and Employer's Liability.
Limits of Liability: Worker's Compensation: Statutory limits in the jurisdiction wherein the Work is to be performed.
Employer's Liability: A minimum of \$1,000,000.
 - (ii) Comprehensive general liability including Bodily Injury and Property Damage.
Limits of Liability: A minimum of \$1,000,000 Combined Single Limit.
Endorsements: WSRC and the Government to be endorsed as Additional Insured.
Contractual Liability including all coverage endorsed on the basic policy.
 - (iii) Automobile Liability including Bodily Injury and Property Damage including All Owned, Non-Owned and Hired.
Limits of Liability: \$1,000,000 Combined Single Limit
Endorsements: WSRC and the Government to be endorsed as Additional Insured.
- (2) Certificates of insurance evidencing that the requirements of this Article have been met shall be furnished to WSRC before work is commenced with respect to performance under this Order. The insurance requirements pursuant to the provisions of this Article shall be in such form and for such periods of time as WSRC may require or approve. Provisions shall be made for thirty days advance notice by mail to WSRC of change in or cancellation of such insurance. Certificates shall be issued by insurance carriers satisfactory to WSRC.
- (3) In the event the Supplier fails to furnish such Certifications of Insurance, as required in Paragraph 2 hereinabove, prior to commencement of work or to continue to maintain such insurance during the performance of the Order, WSRC shall have the right to stop work and/or to withhold any payments or partial payments required to be made under this Order; and shall have the right to continue withholding any or all of

said payments so long as the Supplier has not complied with the requirements of this Article.

- (4) On contracts involving blasting or other hazardous operations, the Supplier's insurance shall specifically state that all blasting or such other hazardous operations are fully covered.
- D. Supplier agrees to comply with and require its Subcontractors to comply with all applicable laws, rules, and regulations with respect to state industrial insurance or Workers/Workmen's Compensation, occupational disease, occupational safety and health, or withholding and payment of social security and federal and state income taxes. Supplier further agrees to indemnify WSRC and the Government against, and to save and hold harmless WSRC and the Government from, any and all liability and expense with respect to claims against WSRC or the Government which may result from the failure or alleged failure of Supplier or of any of its Subcontractors to comply therewith.

A.36 BANKRUPTCY

If the Supplier enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the WSRC Purchasing Representative within five (5) days of initiating the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing of the WSRC Subcontract/Order Numbers for which final payment has not been made.

A.37 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.38 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.39 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)**

DEAR 952.250-70

***A.40 EQUAL OPPORTUNITY (FEB 1999)**

FAR 52.222-26

***A.41 STOP WORK ORDER (AUG 1989)**

FAR 52.242-15

***A.42 CONVICT LABOR (AUG 1996)**

FAR 52.222-3

***A.43 NOTICE OF LABOR DISPUTES (FEB 1997)**

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 CONTRACTOR EMPLOYEES (DEC 2000)**

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

***A.46 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1998)**

FAR 52.244-6

***A.47 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JULY 2000)**

FAR 52.225-13

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.38, “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.38, “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

(Note: If this Article is applicable, Article A.24 is deleted.)

***C.5 WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)**

FAR 52.222-20

(Note: If this Order is for the manufacture or furnishing of materials, supplies, articles or equipment and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), this Article applies).

***C.6 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**

FAR 52.222-21

SECTION D

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

D.1 INSPECTION OF SUPPLIES AND SERVICES

A. Definitions

- (1) "Services" as used in this article includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (2) "Supplies" as used in this article, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

- B. Supplier shall provide and maintain an inspection system acceptable to WSRC covering Services and/or Supplies and shall tender to WSRC for acceptance only Supplies that have been inspected in accordance with the inspection system and have been found by Supplier to be in conformity with Order requirements. As part of the system, Supplier shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to WSRC and the Government during Order performance and for as long afterwards as this Order requires. WSRC and the Government may perform reviews and evaluations reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the Work. The right of review, whether exercised or not, does not relieve Supplier of its obligations under this Order.
- C. WSRC and the Government has the right to inspect and test all Supplies and Services called for by this Order, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. WSRC and the Government shall perform inspections and tests in a manner that will not unduly delay the Work. WSRC and the Government assume no contractual obligation to perform any inspection and test for the benefit of Supplier, unless specifically set forth elsewhere in this Order.
- D. If WSRC or the Government perform an inspection or test on the premises of Supplier or a Subcontractor, Supplier shall furnish, and shall require Subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as

otherwise provided in this Order, WSRC shall bear the expense of WSRC and Government inspections or tests made at other than the Supplier's or Subcontractor's premises; provided, that in case of rejection, WSRC and the Government shall not be liable for any reduction in the value of inspection or test samples.

- E. (1) When Supplies or Services are not ready at the time specified by Supplier for inspection or test, WSRC may charge to Supplier the additional cost to WSRC related to the inspection or test.
- (2) WSRC may also charge Supplier for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.
- F. WSRC has the right either to reject or to require correction of nonconforming Supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with Order requirements. WSRC may reject nonconforming Supplies with or without disposition instructions.
- G. Supplier shall remove Supplies rejected or required to be corrected. However, WSRC may require correction in place, promptly after notice, by and at the expense of Supplier. Supplier shall not tender for acceptance corrected or rejected Supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.
- H. If any of the Services do not conform with Order requirements, WSRC may require Supplier to perform the Services again in conformity with Order requirements, at no increase in Order amount. When the defects in Services cannot be corrected by reperformance, WSRC may
- (1) Require Supplier to take necessary action to ensure that future performance conforms to Order requirements and
 - (2) Reduce the Order price to reflect the reduced value of the Services performed.
- I. If Supplier fails to remove, replace, or correct rejected Supplies promptly, that are required to be removed or to be replaced or corrected, or to reperform nonconforming Services promptly in conformance with Order requirements or to take the necessary action to ensure future performance of Services in conformity with Order requirements, WSRC may
- (1) By Order or otherwise, remove, replace, or correct the Supplies and perform the Services and charge the cost to Supplier;
 - (2) Terminate this Order for default; or

- (3) Require delivery and make an equitable price reduction.
- J. (1) If this Order provides for the performance of quality assurance at source, and if requested by WSRC, the Supplier shall furnish advance notification of the time
 - (i) When Supplier inspection or tests will be performed in accordance with the terms and conditions of this Order and
 - (ii) When the Supplies will be ready for WSRC inspection.
- (2) The WSRC request shall specify the period and method of the advance notification and the WSRC representative to whom it shall be furnished. Requests shall not require more than two workdays of advance notification if the WSRC representative is in residence in the Supplier's plant, nor more than seven workdays in other instances.
- K. WSRC shall accept or reject Supplies as promptly as practicable after delivery, unless otherwise provided in this Order. WSRC's failure to inspect and accept or reject the Supplies shall not relieve Supplier from responsibility, nor impose liability on WSRC, for nonconforming Supplies.
- L. Inspections and tests by WSRC and the Government do not relieve Supplier of responsibility for defects or other failures to meet Order requirements. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in this Order.
- M. If acceptance is not conclusive for any reason, WSRC, in addition to any other rights and remedies provided by law, or under other provisions of this Order, shall have the right to require the Supplier
 - (1) At no increase in Order price, to correct or replace the defective or nonconforming Supplies at the original point of delivery or at Supplier's plant, at WSRC's election and in accordance with a reasonable delivery schedule as may be agreed upon between Supplier and WSRC; provided, that WSRC may require a reduction in Order price if Supplier fails to meet such delivery schedule, or
 - (2) Within a reasonable time after receipt by Supplier of notice of defects or nonconformance, to repay such portion of this Order as is equitable under the circumstances if WSRC elects not to require correction or replacement. When Supplies are returned to Supplier, Supplier shall bear the transportation cost from the

original point of delivery to Supplier's plant and return to the original point when that point is not the Supplier's plant. If Supplier fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of ten days (or such longer period as WSRC may authorize in writing) after receipt of notice from WSRC specifying such failure, WSRC shall have the right by contract or otherwise to replace or correct such Supplies and charge to Supplier the cost occasioned thereby.

(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.38, "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.

E.1 TERMINATION FOR CONVENIENCE OF WSRC

Article A.16 is hereby deleted.

- A. WSRC may terminate performance of the Work, in whole or, from time to time, in part if WSRC determines that a termination is in the WSRC's interest. WSRC shall terminate by delivering to Supplier a Notice of Termination specifying the extent of termination and the effective date. Upon receipt of the notice, if title to property is vested in Supplier under this Order, it shall revert to the Government regardless of any other article of this Order, except for property that Supplier disposed of by bona fide sale or removed from the site.
- B. After receipt of a Notice of Termination, and except as directed by WSRC, Supplier shall immediately proceed with the following obligations, regardless of delay in determining or adjusting any amounts due under this article:
 - (1) Stop Work as specified in the notice.

- (2) Place no further subcontracts or orders (referred to as subcontracts in this article) for materials, services, or facilities, except as necessary to complete the continued portion of this Order.
 - (3) Terminate all subcontracts to the extent they relate to the Work terminated.
 - (4) Assign to the Government, as directed by WSRC, all right, title, and interest of Supplier under the subcontracts terminated, in which case WSRC shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by WSRC, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this article.
 - (6) As directed by WSRC, transfer title to the Government and deliver to WSRC
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the Work terminated, and
 - (ii) The completed or partially completed plans, drawings, information, and other property that, if this Order had been completed, would be required to be furnished to WSRC.
 - (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 Order that is in the possession of Supplier and in which WSRC has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by WSRC, any property of the types referred to in subparagraph (6) above; provided, however, that Supplier (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 Order, credited to the price or cost of the Work, or paid in any other manner directed by WSRC.
- C. After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, Supplier may submit to WSRC a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by WSRC. Supplier may request WSRC to remove those items or enter into an agreement for their storage. Within fifteen days, WSRC will accept title to those items and remove them or enter into a storage agreement. WSRC may verify the list upon removal of the items, or if stored, within forty-five days from submission of the list, and shall correct the list, as necessary, before final settlement.
- D. After termination, Supplier shall submit a final termination settlement proposal to WSRC in the form and with the certification prescribed by WSRC. Supplier 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 Supplier within this one-year period. However, if WSRC determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension. If Supplier fails to submit the proposal within the time allowed, WSRC may determine, on the basis of information available, the amount, if any, due Supplier because of the termination and shall pay the amount determined.
- E. Subject to paragraph D above, Supplier and WSRC may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph E or paragraph F below, exclusive of settlement costs, may not exceed the total Order price as reduced by
- (1) The amount of payments previously made and
 - (2) The Order price of Work not terminated.
- This Order shall be amended and Supplier paid the agreed amount. Paragraph F below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- F. If Supplier and WSRC fail to agree on the whole amount to be paid because of the termination of Work, WSRC shall pay Supplier the amounts determined by WSRC as follows, but without duplication of any amounts agreed on under paragraph E of this article:
- (1) For Work performed before the effective date of termination, the total (without duplication of any items) of:
 - (i) The cost of the Work;
 - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are

- properly chargeable to the terminated portion of this Order, if not included in subdivision (i) above; and
- (iii) A sum, as profit on subdivision (i) above, determined by WSRC under section 49.202 of the Federal Acquisition Regulation, in effect on the date of this Order, to be fair and reasonable; however, if it appears that Supplier would have sustained a loss on the entire Order had it been completed, WSRC shall allow no profit under this subdivision (iii) and shall reduce the amount of the settlement to reflect the indicated rate of loss.
- (2) The reasonable costs of settlement of the work terminated, including:
- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
- (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
- (iii) Preservation and protection of property under subparagraph B (8) of this article.
- G. Except for normal spoilage, and except to the extent that WSRC expressly assumed the risk of loss, WSRC shall exclude from the amounts payable to Supplier under paragraph F above, the fair value, as determined by WSRC, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to WSRC or to a buyer.
- H. The cost principles and procedures of Part 31 of the Federal Acquisition Regulation as supplemented or modified by Part 931 of the Department of Energy Acquisition Regulation, in effect on the date of this Order, shall govern all costs claimed, agreed to, or determined under this article.
- I. If Supplier failed to submit the termination settlement proposal within the time provided in paragraph D or K and failed to request a time extension, the decision of WSRC is final and not subject to the Disputes article. If WSRC has made a determination of the amount due under paragraph D, F, or K, WSRC shall pay Supplier
- (1) The amount determined by WSRC, if there is no right of appeal or if no timely appeal has been taken, or
- (2) The amount finally determined on an appeal.
- J. In arriving at the amount due Supplier under this article, there shall be deducted-
- (1) All unliquidated advance or other payments to Supplier under the terminated portion of this Order;
- (2) Any claim which WSRC or the Government has against Supplier under this Order; and
- (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by Supplier or sold under the provisions of this article and not recovered by or credited to WSRC.
- K. If the termination is partial, Supplier may file a proposal with WSRC for an equitable adjustment of the price(s) of the continued portion of this Order. WSRC shall make any equitable adjustment agreed upon. Any proposal by Supplier for an equitable adjustment under this article shall be requested within ninety days from the effective date of termination unless extended in writing by WSRC.
- L. (1) WSRC may, under the terms and conditions it prescribes, make partial payments and payments against cost incurred by Supplier for the terminated portion of this Order, if WSRC believes the total of these payments will not exceed the amount to which Supplier will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, Supplier shall repay the excess to WSRC upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by Supplier to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in Supplier's termination settlement proposal because of retention or other disposition of termination inventory until ten days after the date of the retention or disposition, or a later date determined by WSRC because of the circumstances.
- M. Unless otherwise provided in this Order or by statute, Supplier shall maintain all records and documents relating to the terminated portion of this Order for three years after final settlement. This includes all books and other evidence bearing on Supplier's costs and expenses under this Order. Supplier shall make these records and documents available to the Government, at Supplier's office, at all reasonable times, without any direct charge. If approved by WSRC, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

E.2 ACCOUNTS, RECORDS AND INSPECTION

A. Cost or Pricing Data

If, pursuant to law, the Supplier has been required to submit cost or pricing data in connection with this Order or any modification to this Order, WSRC, the Government or representatives of the Government who are employees of the Government shall have the right to examine and audit all of the Supplier's books, records, documents, and other data regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, application software, database management software, utilities, etc.) including computations and projections related to proposing, negotiating, pricing, or performing the Order or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projects used.

B. Reports

If the Supplier is required to furnish cost, funding, or performance reports, WSRC, the government or representatives of the Government who are employees of the Government shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating

- (1) The effectiveness of the Supplier's policies and procedures to produce data compatible with the objectives of these reports and
- (2) The data reported.

C. Availability

The Supplier shall make available at its office at all reasonable times the materials described in paragraphs A and B above, for examination, audit, or reproduction, until three (3) years after final payment under this Order or for any longer period required by statute or by other clauses of this contract. In addition -

- (1) If this Order is completely or partially terminated, the records relating to the work terminated shall be made available for three (3) years after any resulting final termination settlement; and
- (2) Records relating to appeals under the Disputes article or to litigation or the settlement of the Government and WSRC claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are disposed of.

D. Inspections

DOE shall have the right to inspect the work and activities of the Supplier under this Order at such time and in such manner as it shall deem appropriate.

- E.** Except as otherwise provided in FAR Subpart 4.7, Contractor Records Retention, the Supplier may transfer computer data in machine-readable form from one reliable computer medium to another. The Supplier's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original data. The Supplier's choice of form or type of materials described in paragraphs (A), (B), and (C) of this article affects neither the Supplier's obligations nor WSRC or the Government's rights under this clause.

F. Comptroller General

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

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

- G.** The Supplier shall insert a clause containing all the terms of this article, including this paragraph (G), in all subcontracts over \$100,000 under this Order, altering the clause only as necessary to identify properly the contracting parties.

(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.38, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)

***E.3 AUTHORIZATION AND CONSENT (JUL 1995)**

FAR 52.227-1

***E.4 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2000)**

DEAR 970.5227-5

***E.5 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)**

FAR 52.203-12

***E.6 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 1999)**

FAR 52.219-8

***E.7 INTEGRITY OF UNIT PRICES (OCT 1997)**

FAR 52.215-14

***E.8 ANTI-KICKBACK PROCEDURES (JUL 1995)**

FAR 52.203-7

***E.9 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)**

FAR 52.203-6

***E.10 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION – GENERAL (JUL 1995)**

FAR 52.222-4

***E.11 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (JUN 1997)**

FAR 52.247-64

***E.12 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 3161 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.38, "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 Purchasing Representative documentation of its WPP for review and acceptance. The Purchasing Representative will establish dates for submittal, discussions, and revisions to the WPP. The 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 Purchasing Representative may issue an order stopping work in whole or in part. Any stop work order issued by the 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 Purchasing Representative issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the 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 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 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. 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.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 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 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 GENERAL CONDITIONS OF EQUIPMENT RENTAL

- A. Rental Payments
Upon the submission of proper invoices or vouchers, Westinghouse Savannah River Company (WSRC) shall pay, as full compensation for use of the Equipment, rent at rates set forth in the order to which these General Conditions are attached. Payments will be made at the end of each month or at the end of the rental, whichever occurs first, for rental accrued during the previous rental period.
- B. Rental Rates
 - (1) The actual length of the rental period will establish the Base Rental rate (for example, if the Lessor's proposal included a daily, weekly, and monthly rate, and the actual rental period was three days - the daily rate would apply; if the actual rental period was ten days - the weekly rate would apply; and if the actual rental period was 40 days - the monthly rate would apply). The Base Rental Period shall be as in column 1 below. For portions of a rental period beyond one or more full Base Periods, rental shall be calculated by the fractional period multiplied by the Base Rental rate. The Fractional Periods are specified in Column 2 below. Base Rental rates contemplate the following maximum use: Day - 8 hrs. (or as stipulated at time of rental); Week - 40 hrs; and Month - 176 hrs. For each hour that the Equipment is in use in excess of the applicable contemplated operation, there shall be paid as rental a sum equal to the Base Rental rate multiplied by the overtime rate in Column 3 below.
 - (2) Should the total rental calculated on the applicable Base Rental rate, exclusive of overtime, exceed the proposed rate for the next longer rental term the lesser rental shall be paid.

	Column 1	Column 2	Column 3
<u>Rental Term</u>	<u>Base Rent Period</u>	<u>Fractional Period</u>	<u>Overtime Rate</u>
Mnthly	1 cal mth	.0455xmnthy = rt/day	.0057x mnthy = rt/hr

Wkly	7 cons dys	.20 x wkly = rt/day	.025 x wkly = rt/hr
Daily	24 cons hrs	.125 x dly = rt/hr	.125 x dly = rt/hr
Hourly	1 oper hr	1 hour	1 hour

C. Condition of Equipment

- (1) When delivered to job site, the Equipment shall be in condition to render efficient, economical, and continuous service and its condition shall comply fully with all applicable Federal and State statutes and any regulations issued thereunder. Each item of Equipment shall be inspected, tested, and inventoried by Lessor and WSRC at job site upon arrival and immediately prior to return shipment. A joint written report shall be made and copies filed with each of the parties. Lessor shall accept WSRC's report in the event the Lessor fails to participate in such inspections. Such inspections and reports shall fix and determine the rights and obligations of the parties with reference to the condition of the Equipment.
- (2) If WSRC determines that any equipment furnished does not comply with this purchase order, WSRC shall promptly inform the Lessor in writing. If the Lessor fails to replace the equipment or correct the defects as required by WSRC, WSRC may
 - (i) By contract or otherwise, correct the defect or arrange for the lease of similar equipment and shall charge or set off against the Lessor any excess costs occasioned thereby, or
 - (ii) Terminate the purchase order under the Default article of this order.
- (3) WSRC shall make repairs or, at its option, shall reimburse Lessor for repairs due to damage caused by exceeding manufacturer's rated capacities. All other repairs attributable to equipment failure shall be Lessor's responsibility. Should Equipment become inoperative because of necessary repairs which are the Lessor's responsibility, rental period will discontinue upon WSRC's notification to the Lessor of such conditions, and rental period will resume only when Equipment is placed in a condition as required under this Section 3. WSRC will notify Lessor prior to making repairs for the account of the Lessor. Unless otherwise specified in the order, WSRC will furnish all fuel and lubricants and all operators and mechanics for necessary operation, use, and servicing of the Equipment.

- (4) Equipment, when returned to Lessor, shall be in as good condition as when delivered at job site, usual and ordinary wear and tear excepted.

D. Rental Period

- (1) The period for which rental is payable for an item of Equipment shall begin on the date Equipment is delivered to the job site, except that if WSRC gives a definite required delivery date to the Lessor prior to shipment, the Rental Period shall not start until such date. However, rent shall accrue only for the period that the equipment is in the possession of WSRC. The Rental Period shall end when the equipment is delivered for shipment to the point of origin or such other return point as may be designated by Lessor, such delivery to be evidenced by a Bill of Lading or other similar evidence covering shipment. If Lessor fails to notify WSRC of destination prior to time Equipment is ready for return shipment, no rental time shall accrue until such notification is given WSRC and Equipment is loaded for Shipment.
- (2) If Equipment is not in required condition, as determined by WSRC, when it arrives at the job site, the Rental Period shall not begin until it shall, at the expense of Lessor, have been placed in proper condition.
- (3) If the inspection report made immediately prior to return shipment establishes that the Equipment is not in condition required of WSRC under the fourth paragraph of Section C of these conditions, WSRC shall do all things necessary to place it in such condition and the Rental Period shall not terminate prior to placing the Equipment in such condition.
- (4) Unless otherwise stated in the order, WSRC makes no representation or guarantee as to the length of the Rental Period or the amount of rental, which will accrue, for any Equipment, it being the intent that the Equipment may be rented for as long as WSRC requires. The rental of any Equipment which does not perform to WSRC's satisfaction may be terminated upon notice by WSRC to Lessor.

E. Transportation Costs

If so stated in the order, transportation will be paid by WSRC F.O.B. original point of shipment and return transportation F.O.B. to original point of shipment or equivalent mileage. Transportation of Equipment shall be accomplished by the most economical means and

there shall be paid the actual cost of such transportation. No transportation charges will be paid by WSRC for any Equipment which WSRC determines is not in the condition required by Section C.

F. Loading, Unloading & Transport of Self-Propelled Medium or Heavy Construction Equipment.

Lessor shall ensure that any activity involving the loading, unloading, and transport of self-propelled medium or heavy construction equipment on the Savannah River Site (i.e., upon delivery and pickup by the Lessor) is performed in a manner that provides for the safety of all personnel involved in the process. Prior to performing any such activities the Lessor shall read and complete the WSRC "Self Propelled Equipment Loading, Unloading and Transport Safety Review Checklist", and provide a copy to the WSRC Portable Equipment Commodity Management Center (PECMC) representative on delivery of the equipment to SRS and also before equipment is loaded for return to the Lessor. A Copy of the checklist can be found on the SRS Home Page or can be provided by the WSRC Procurement Representative on request.

G. Liability Provisions

By acceptance of the order to which these Conditions apply, Lessor agrees that

- (1) Lessor assumes and hereby relieves WSRC of any and all liability for any loss or damage to the Equipment rented to WSRC occurring during the period from the date of shipment to WSRC to the date of return to Lessor as the result of any cause other than the sole fault or negligence of WSRC;
- (2) WSRC's liability under this provision shall be limited to the fair market value of the Equipment taking into consideration its age and condition immediately prior to said loss or damage.

H. Recapture Provisions

Note: Optional and in effect only if so stated in the terms and conditions of the order.

- (1) If this provision is applicable,
 - (i) a recapture valuation mutually agreeable to WSRC and Lessor shall be established and stated in the order
 - (ii) Lessor certifies that there are no encumbrances of any nature, legal or equitable, held by any person against the Equipment rented hereunder, unless so stated in the order.
- (2) At any time during or at the end of the rental period of the Equipment, WSRC may purchase the Equipment by paying to Lessor

the difference between such valuation and total rental paid, plus a charge to cover interest at a rate specified in this order for the unpaid balance of the equipment valuation for each month or fraction thereof that such Equipment has been under rental to WSRC. Title to such Equipment shall then vest in WSRC and Lessor shall deliver to WSRC such instruments of title as WSRC may require, free of any and all liens and encumbrances.

I. Equipment Operated and Maintained

The following provisions shall be applicable if Equipment is rented on the basis of operation and maintenance by the Lessor:

- (1) All rental rates stipulated in this order include all charges for operation and maintenance of the Equipment by Lessor.
- (2) Lessor has qualified or will promptly qualify and will make all payments under the terms of the unemployment compensation laws of the state in which the Equipment will be operated. In addition, Lessor will, at Lessor's expense, carry insurance in minimum limits as specified in the Article titled "Work on WSRC, Government or other Premises", included in these General Provisions.
- (3) Lessor shall obtain WSRC's prior approval before employing any subcontractors. Each subcontractor must also carry insurance as specified in subparagraph (2), supra. Lessor shall carry Contractor's Protective Public Liability, Bodily Injury, and Protective Property Damage insurance of the same minimum limits.
- (4) Lessor shall be responsible for all persons engaged to operate or maintain the Equipment or to perform any other work Lessor is obligated to perform under this purchase order. None of said persons shall constitute employees of WSRC.
- (5) In the operation of the Equipment, Lessor shall comply with all Federal, State, and local regulations and with all safety regulations in effect on the WSRC site. In addition, Lessor shall
 - (i) Comply with recognized safety practices for the type of work being performed including the furnishing of necessary safety equipment
 - (ii) Conduct and protect operations in such a manner as to avoid exposing others to injury.
- (6) Lessor shall ensure that all equipment operators have appropriate qualifications

and experience for operating the specified equipment, to include any applicable State, Federal or local licenses or certifications.

J. Notices

Any notice to be given hereunder shall be mailed to the party to be notified, at the address set forth in the order, by registered mail, and shall be deemed given when so mailed.

G.6 GENERAL EMPLOYEE TRAINING AND ANNUAL REFRESHER TRAINING FOR SUBCONTRACT EMPLOYEES

The following terms are applicable if performance of this Order will require the Supplier/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.7 SECURITY EDUCATION REQUIREMENTS FOR SUBCONTRACTORS

The following items are applicable if performance of this subcontract will require the Supplier/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 badges, then the Supplier/Subcontractor shall provide to the WSRC Security Education Office, the name of its representative appointed to administer its 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 badges, 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 Supplier 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.8 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.

G.9 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.
- (iii) Data-driven displays (e.g., spreadsheet charts) must be accompanied by data set used to generate them.

G.10 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.

- 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.11 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 DOE-SR Counterintelligence Officer. The DOE-SR Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of Subcontractor employees traveling to foreign countries or interacting with foreign nationals. The

Subcontractor shall be responsible for requesting defensive Counterintelligence briefings and debriefings of Subcontractor employees who have traveled to foreign countries or interacted with foreign nationals. The subcontractor shall coordinate Counterintelligence Awareness training activities with the WSRC Procurement Representative. The Subcontractor shall immediately report targeting, suspicious activity and other Counterintelligence concerns to the WSRC Procurement Representative; 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.12 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.

G.13 LIMITATION OF FUNDS

NOTE: This article is applicable only if this Order is partially funded.

- A. Of the total price of this Order, the sum of \$ _____ is presently available for payment and allotted to this Order. It is anticipated that additional funds will be allocated to the Order in accordance with the following schedule until the total price of the Order is funded:
- B. The Supplier agrees to perform or have performed work on this Order up to the point at which, if this Order is terminated pursuant to the Termination For Convenience of WSRC article of this Order, the total amount payable by WSRC (including amounts payable for subcontracts and settlement costs) pursuant to the Termination For Convenience of WSRC article would, in the exercise of reasonable judgment by the Supplier, approximate the total amount at the time allotted to the Order. The Supplier is not obligated to continue performance of the work beyond that point. WSRC is not obligated in any event to pay or reimburse the Supplier more than the amount from time to time allotted to the Order, anything to the contrary in the Termination For Convenience of WSRC article notwithstanding.
- C. (1) It is contemplated that funds presently allotted to this Order will cover the work to be performed until _____.

- (2) If funds allotted are considered by the Supplier to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Supplier shall notify WSRC in writing when within the next 60 days the work will reach a point at which, if the Order is terminated pursuant to the Termination For Convenience of WSRC article of the Order, the total amount payable by WSRC (including amounts payable for subcontracts and settlement costs) pursuant to the Termination For Convenience of WSRC article will approximate 75 percent of the total amount then allotted to the Order.
- (3) (i) The notice shall state the estimated date when the point referred to in subparagraph C 2 of this clause will be reached and the estimated amount of additional funds required to continue performance to the date specified in subparagraph C 1 of this clause, or an agreed date substituted for it.
- (ii) The Supplier shall, sixty days in advance of the date specified in subparagraph C 1 of this clause, or an agreed date substituted for it, advise WSRC in writing as to the estimated amount of additional funds required for the timely performance of the Order for a further period as may be specified in the Order or otherwise agreed to by the parties.
- (4) If, after the notification referred to in subdivision C 3 (ii) of this clause, additional funds are not allotted by the date specified in subparagraph C 1 of this clause, or an agreed date substituted for it, WSRC shall, upon the Supplier's written request, terminate this Order on that date or on the date set forth in the request, whichever is later, pursuant to the Termination For Convenience of WSRC article.
- D. When additional funds are allotted from time to time for continued performance of the work under this Order, the parties shall agree on the applicable period of order performance to be covered by these funds. The provisions of paragraphs B and C of this clause shall apply to these additional allotted funds and the substituted date pertaining to them, and the Order shall be modified accordingly.
- E. If, solely by reason of WSRC's failure to allot additional funds in amounts sufficient for the timely performance of this Order, the Supplier incurs additional costs or is delayed in the

performance of the work under this Order, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the work to be performed.

- F. WSRC may at any time before termination, and, with the consent of the Supplier, after notice of termination, allot additional funds for this Order.
- G. The provisions of this clause with respect to termination shall in no way be deemed to limit the rights of WSRC under the default article of this Order. This clause shall become inoperative upon the allotment of funds for the total price of the work under this Order except for rights and obligations then existing under this clause.
- H. Nothing in this clause shall affect the right of WSRC to terminate this Order pursuant to the Termination For Convenience of WSRC article of the Order.

G.14 PROGRESS PAYMENTS

NOTE: If applied, this article consists of additional paragraphs to Article A.6. In the event of an inconsistency between these additional paragraphs and Article A.6, paragraphs A-E, these additional paragraphs take precedence.

- A. WSRC shall make progress payments monthly as the work proceeds or at more frequent intervals as determined by WSRC, on estimates of work accomplished which meet the standards of quality established under the Order, as approved by WSRC. If requested by WSRC, the Supplier shall furnish a breakdown of the total Order price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates WSRC may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Supplier at locations other than the site may also be taken into consideration if:
- (1) Consideration is specifically authorized by this Order; and
 - (2) The Supplier furnished satisfactory evidence that it has acquired title to such material and that the material will be used to perform this Order.
- B. All materials and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as:
- (1) Relieving the Supplier from the sole responsibility for all material and work upon

which payments have been made or the restoration of any damaged work; or

- (2) Waiving the right to WSRC to require the fulfillment of all the terms of the Order.
- C. In making progress payments, WSRC shall retain, until completion and acceptance of all work, ten (10) percent of the estimated value of work accomplished as of the date of the current application for payment. After the estimated value of Work accomplished exceeds fifty (50) percent of the Order amount, and provided the Supplier is proceeding with the Work in the manner and time satisfactory to WSRC, WSRC may reduce the amount to be retained to five (5) percent of the estimated value of Work accomplished as of the date of the current application for payment, or to such lesser amount, including none, as may be decided upon by WSRC.
- D. Notwithstanding any provision of this Order, progress payments shall not exceed 80 percent on work accomplished on undefinitized Order actions. An Order action is any action resulting in an Order, as defined as "Contract" in FAR Subpart 2.1, including Order modifications for additional supplies or services, but not including Order modifications that are within the scope and under the terms of the Order, such as Order modifications issued pursuant to the "Changes, Extras and Substitution" Article, or funding and other administrative changes.

G.15 VARIATION IN ESTIMATED QUANTITY

NOTE: If invoked in this Order, this Article applies to services only.

If the quantity of a unit-priced item in this Order is an estimated quantity and the actual quantity of the unit-priced item varies more than fifteen percent above or below the estimated quantity, an equitable adjustment in the Order price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Supplier may request, in writing, an extension of time, to be received by WSRC within 10 days from the beginning of the delay, or within such further period as may be granted by WSRC before the date of final settlement of the Order. Upon the receipt of a written request for an extension, WSRC shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of WSRC, is justified.

G.16 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 standby 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.17 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.18 COPYRIGHTS FOR WSRC DIRECTED TECHNICAL PERFORMANCE

Supplier 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. Supplier 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 Supplier, Supplier agrees to assign and does hereby

assign all of its rights under the copyrights in such works to WSRC or the U. S. Government.

(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.38, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)

***G.19 CLASSIFICATION/
DECLASSIFICATION (SEP 1997)**

DEAR 952.204-70

***G.20 FILING OF PATENT APPLICATIONS-
CLASSIFIED SUBJECT MATTER (APR
1984)**

FAR 52.227-10

***G.21 PATENT RIGHTS - ACQUISITION BY
THE GOVERNMENT (SEP 1997)**

DEAR 952.227-13

***G.22 PATENT RIGHTS - RETENTION BY
THE CONTRACTOR (SHORT FORM)
(FEB 1995)**

DEAR 952,227-11

***G.23 RIGHTS IN DATA – GENERAL (JUN
1987)**

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

***G.24 RIGHTS IN DATA - ALTERNATE II
(JUN 1987)**

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

***G.25 RIGHTS IN DATA - ALTERNATE III
(JUN 1987)**

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

***G.26 ADDITIONAL DATA REQUIREMENTS
(JUN 1987)**

FAR 52.227-16

***G.27 ORGANIZATIONAL CONFLICTS OF
INTEREST (JUN 1997)**

DEAR 952.209-72

***G.28 SERVICE CONTRACT ACT OF 1965 AS
AMENDED (MAY 1989)**

FAR 52.222-41

***G.29 STATEMENT OF EQUIVALENT RATES
FOR FEDERAL HIRES (MAY 1989)**

FAR 52.222-42

***G.30 SERVICE CONTRACT ACT (SCA)
MINIMUM WAGES AND FRINGE
BENEFITS (MAY 1989)**

FAR 52.222-47

***G.31 FAIR LABOR STANDARDS ACT AND
SERVICE CONTRACT ACT -PRICE
ADJUSTMENT (MULTIPLE YEAR AND
OPTION CONTRACTS) (MAY 1989)**

FAR 52.222-43

***G.32 FAIR LABOR STANDARDS ACT AND
SERVICE CONTRACT ACT - PRICE
ADJUSTMENT (FEB 2002)**

FAR 52.222-44

***G.33 COST ACCOUNTING STANDARDS
(CAS) (APR 1998)**

FAR 52.230-2

***G.34 ADMINISTRATION OF COST
ACCOUNTING STANDARDS (NOV 1999)**

FAR 52.230-6

***G.35 DISCLOSURE AND CONSISTENCY OF
COST ACCOUNTING PRACTICES (APR
1998)**

FAR 52.230-3

***G.36 PRIVACY ACT (APR 1984)**

FAR 52.224-1 and 52.224-2

***G.37 DUTY FREE ENTRY (FEB 2000)**

FAR 52.225-8

***G.38 PREFERENCE FOR U.S.-FLAG AIR
CARRIERS (JAN 1997)**

FAR 52.247-63

***G.39 ACQUISITION OF REAL PROPERTY
(APR 1984)**

DEAR 952.217-70

***G.40 GOVERNMENT PROPERTY
FURNISHED "AS IS" (APR 1984)**

FAR 52.245-19

***G.41 DIFFERING SITE CONDITIONS (APR
1984)**

FAR 52.236-2

***G.42 SUSPENSION OF WORK (APR 1984)**

FAR 52.242-14

***G.43 FIRST ARTICLE APPROVAL –
TESTING (SEP 1989)**

FAR 52.209-4

***G.44 PRINTING (DEC 2000)**

DEAR 970.5208-1

***G.45 FOREIGN TRAVEL (FEB1997)**

DEAR 952.247-70

***G.46 PRICE REDUCTION FOR DEFECTIVE
COST OR PRICING DATA (OCT 1997)**

FAR 52.215-10

***G.47 PRICE REDUCTION FOR DEFECTIVE
COST OR PRICING DATA—
MODIFICATIONS (OCT 1997)**

FAR 52.215-11