

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE DE-AC07-99ID13727	PAGE 1 OF 2 PAGES
2. AMENDMENT/MODIFICATION NO. M038	3. EFFECTIVE DATE See Block 16c	4. REQUISITION/PURCHASE REQ. NO. NOPR	5. PROJECT NO. (If applicable)	
6. ISSUED BY U.S. Department of Energy Idaho Operations Office Procurement Services Division 850 Energy Drive, MS 1221 Idaho Falls, ID 83401-1563		CODE	7. ADMINISTERED BY (If other than Item 6) Wendy L. Bauer, Contract Specialist, (208) 526-2808 Cheryl A. Thompson, Contracting Officer, (208) 526-5743	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and Zip Code) Bechtel BWXT Idaho, LLC PO Box 1625, MS 3560 Idaho Falls, ID 83415			9A. AMENDMENT OF SOLICITATION NO.	
			9B. DATED (SEE ITEM 11)	
			10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC07-99ID13727	
			10B. DATED (SEE ITEM 13) June 1, 1999	
CODE	FACILITY CODE			

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

N/A

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

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

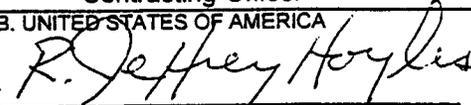
E. IMPORTANT: Contractor ___ is not, X is required to sign this document and return [3] copies to the issuing office.

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

The purpose of this modification is to make administrative changes to the contract.

(See the following page)

Except as provided herein, all terms and conditions of the document referenced in Items 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) Craig D. Cutler Prime Contract Administrator		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) R. Jeffrey Holyes Contracting Officer	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED 2-13-02	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED 2/19/02
BY  (Signature of person authorized to sign)		BY  (Signature of Contracting Officer)	

The following administrative changes are made as a result of this modification:

1. Section H, paragraph H.4 and Section J, Attachment J-D, Small Business Subcontract Plan, dated November 15, 2001, is hereby incorporated by reference into the contract.
2. Section I, Contract Clause I.32, DEAR 970.5204-22 Contractor Purchasing System (NOV 1997) is deleted and replaced by the attached Clause I.32, DEAR 970.5244-1 Contractor Purchasing System (DEC 2000).
3. Section I, Contract clauses I.55 DEAR 970.5204.71 Patent Rights-Nonprofit Management and Operating Contractors (FEB 1995) Deviation, and I.56 DEAR 970.5204-72 Patent Rights-Profit-Making Management and Operating Contractors (FEB 1995) are deleted in their entirety and replaced with the attached Section I Clause I.55 DEAR 970.5227-12 Patent Rights-Management and Operating Contracts, For-Profit Contractor, Advance Class Waiver (NOV 2000)
4. Section I, Contract Clauses, Table of Contents, pages I-ii through I-iv are also replaced as a result of the changes.
5. Section J, Attachment J-A, Schedule A-1, BBWI List of Key Personnel, is deleted in its entirety and replaced with the attached Attachment J-A, Schedule A-1.

FY 2002
SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS
SUBCONTRACTING PLAN

(Period of October 1, 2001 through September 30, 2002)

CONTRACTOR: Bechtel BWXT Idaho, LLC. (BBWI)
P.O. BOX 1625
IDAHO FALLS, ID 83415

PRIME CONTRACT: DE-AC07-99ID13727

The Bechtel BWXT Idaho, LLC. (BBWI) FY2002 Small Business and Small Disadvantaged Business Subcontracting Plan is submitted in accordance with FAR 52.219-8 and 52.219-9 and Prime Contract Clause H.04 "*Small Business and Small Disadvantaged Business Subcontracting Plan*", which is incorporated as an update revision to Section J, Attachment D.

This plan describes BBWI's approach to maximize opportunities for small, small disadvantaged, 8(a), small women-owned, small Native American, and HUBZone small businesses, while also incorporating an Idaho preference program. The Idaho National Engineering and Environmental Laboratory (INEEL) has a significant economic impact on the State of Idaho based on the high volume of taxpayer dollars spent to obtain goods and services for the management and operation of the INEEL. BBWI is committed to ensure a fair percentage of those dollars are retained within the Idaho economy in conjunction with its aggressive socioeconomic subcontracting goals. BBWI supports DOE's ongoing commitment to small business utilization and supplier diversity, which provides vital links to the local community, increases our flexibility in meeting project goals, strengthens the local economy, creates new opportunities and represents best business practice.

Small business participation and development is an integral aspect of BBWI's approach to project execution and meeting the mission of the INEEL, which is demonstrated by aggressively promoting its small business program and encouraging the participation of small business concerns to the maximum extent practical.

1. Subcontract Goals

Subcontract Goals are expressed in terms of an established percentage of estimated material or service dollars derived from the projected fiscal year budget. FY 2002 goals shall be calculated by an estimated acquisition budget of \$150,000,000. Goals may be changed with the approval of the Contracting Officer if there is a cancellation or an addition of programs or projects. FY 2002 subcontracting goals are presented in Table 1 below:

Table 1 – Percentage Goals

FY 2002 PERCENTAGE SUBCONTRACTING GOALS Based on total estimated acquisition dollars of \$150,000,000		
Category	Goal Percent (%)	Respective Estimated Dollars
Small Business (SB) Total	60.0%	90,000,000
HUBZone Small Business (HUB)	2.5%	3,750,000
Small Disadvantaged Business (SDB)	12.0%	18,000,000
8(A) Awards	4.0%	6,000,000
Woman-Owned Business (WOB)	8.0%	12,000,000
Native American-Owned Business (NAB)	3.0%	4,500,000
Total Idaho Dollars Includes large and small businesses	50.0%	\$ 75,000,000
Total Idaho Activity Includes large and small businesses	80.0%	N/A

Principal categories of potential and anticipated subcontracting opportunities available for small business concerns are provided in Table 2 below. The categories shown are for general work groupings only.

Table 2 - Potential Subcontract Opportunities For Small Business

Subcontracting Potential	Small Business	HUB	SDB	WOSB
Computer equipment	4	4	4	
Office furniture/equipment	4	*		4
Office supplies	4	*	4	4
Electrical and electronic supplies	4	*	4	4
Fuel and petroleum products	4	*	4	4
Lab equipment/instrumentation	4	*		
Safety equipment and supplies	4	4		4
Small tools	4	*	4	4
Construction equipment/vehicle rental	4	*	4	4
Building materials	4	*	4	
General construction	4	*	4	4
Facilities maintenance and repair	4	4	4	
Road maintenance and repair	4	4	4	4
Maintenance services (janitorial/equip)	4	*	4	
Environmental support services	4	4	4	4
Technical and personnel services	4	*	4	4
Computer service/maintenance	4	4	4	

* BBWI will continually seek new HUBZone certified suppliers and evaluate all categories to maximize future subcontracting opportunities as new HUBZone certified suppliers become available.

2. Method Used to Develop Subcontracting Goals

Subcontracting goals for FY2002 are based on historical performance, estimated procurement dollars and programmatic requirements and cost-cutting initiatives, as well as analysis of available supplier base within each of the respective goal categories.

3. Methods Used to Identify Potential Sources for Solicitation

Methods used to identify potential sources for solicitation include the following:

- US Small Business Administration PRONET data base
- BBWI Supplier Performance Evaluation System
- State and Regional SBA resources
- Idaho Department of Commerce
- Idaho Business Network
- Buy Idaho, published by Buy Idaho, Inc
- National Minority Purchasing Council Vendor Information Services
- Various directories and source lists such as the following:
 - Minority Supplier Development Council
 - Local US Small Business Administration listings
 - National Association of Minority Contractors
 - MBISYS (National Minority Supplier Development Council database)
 - Thomas Register of American Manufacturers, published by TR Data Publishing
- Conduct and/or participate in various local, regional, and national minority and small business trade fairs and conferences.
- Coordination, cooperation, and membership with small business organizations, economic development organizations and commercial and government organizations at local, state, and national levels.

4. Indirect Costs

Indirect costs are not included in the goals under this plan.

5. Administrator of Subcontracting Plan

The following individual is designated to manage and administer this subcontracting plan. Any change shall be communicated in writing to the Contracting Officer:

Natalie D. Packer, Small Business Officer
Supply Chain Management & Contracts
Bechtel BWXT Idaho, LLC.
Idaho National Engineering & Environmental Laboratory
P. O. Box 1625
Idaho Falls, ID 83415-3521
(208) 526-7833 ndp@inel.gov

The Small Business Officer shall implement, manage and administer this subcontracting plan including, but not limited to, the following:

- Review, revise, amend, and/or supplement applicable procedures and instructions to assure that their timeliness, scope, and depth are in keeping with changing requirements and conditions, in order to retain continuous and affirmative implementation of the program.
- Provide appropriate hearings for small businesses and their representatives who seek direction on how to do business with BBWI and the INEEL. Describe BBWI's policies, and practices, provide marketing assistance and offer recommendations to enhance and expand capabilities
- Facilitate contact between small business suppliers and respective procurement agents and technical/program personnel.
- Devise and maintain suitable statistical data to delineate the nature and extent of SB sources to procurement personnel in order to promote their use, where none was previously known, or to enhance competition by providing additional sources.
- Employ optimum data processing capabilities to obtain subcontracting data for preparation of inclusive and accurate reports as required or as may be considered valuable to monitor or demonstrate the value and/or effectiveness of the program.
- Establish and maintain contacts and communication with Bechtel National Headquarters and network with other small business program managers across the Bechtel family where opportunities to support, implement, or enhance program activities exist or may be developed.
- Attend small business training and monitor regulations and DOE orders to ensure continual compliance.
- Review and approve Small Business/Small Disadvantaged Business Subcontracting Plans submitted by large business subcontractors.
- Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and SF 295, Summary Subcontract Report, in accordance with the prime contract and instructions provided by the Contracting Officer.
- Verify subcontracts contain the flow-down clauses pertaining to small business concerns when required and maintain the policies and procedures required by the prime contract.
- Assure small businesses have maximum opportunity to compete for subcontracts.
 - Maintain a database of potential small business subcontractors.
 - Seek out new small business concerns.
 - Mentor existing small business concerns currently under subcontract, enhancing their ability to provide timely, cost-effective quality services.

- Advise and train personnel on the purposes of this plan and foster adequate support.
- Act as primary liaison and maintain good working relationships with Small Business Administration representatives to obtain assistance and coordination in finding capable small businesses.
- Act as primary liaison and maintain a close working relationship with DOE to ensure that BBWI's project objectives and activities are consistent with the DOE mission.
- Ensure lower-tier subcontractors submit their subcontracting plans and 294 reports, and monitor for compliance.
- Provide monthly reports to BBWI's President and General Manager regarding progress made toward achievement of goals under this program.

6. Implementation

The following additional functions will be performed to effectively implement this plan:

- Ensure solicitations are packaged such as to facilitate participation by small businesses in subcontracting opportunities and solicitation, bid, and proposal activities. (including time for preparation, scope of work, quantities, specifications, and delivery schedules)
- Establish and maintain contacts with small business trade associations and business development organizations.
- Conduct internal workshops, seminars, and training programs to ensure internal customers and buyers are acquainted with BBWI's policy and prime contract requirements, and to ensure that, externally, small businesses are familiar with requirements for doing business at the INEEL site.
- Maintain an effective outreach program by sponsoring and attending regional procurement conferences, trade fairs, and other functions, to identify qualified sources and to promote the small business program.
- Pre-select and qualify small business concerns to perform specific scopes of work.
- Structure the program to help develop the capabilities and quality of services provided by small business suppliers and subcontractors currently performing work at the site.
- Maintain effective business assistance and technical assistance programs which are designed to broaden the available competitive base of suppliers and subcontractors and to help small business concerns develop and expand their business, technical expertise, and ability to provide quality service to the government and commercial sectors.

Business Assistance Program. BBWI will make available our Chief Financial Officer and selected members of Finance and Accounting, Procurement, Project Controls, and other departments to provide counseling to small business representatives. Counseling will be available for areas such as:

- Business and management techniques
- Cost control and monitoring systems
- Scheduling techniques
- Finance and accounting
- Resource identification
- Business development practices
- Marketing and proposal services

Technical Assistance Program. BBWI will provide technical personnel and resources to guide and train small business contractors. BBWI's experience in implementing efficient, cost-effective, safe, and environmentally sound techniques and work methodologies will enable participants in the technical assistance program to provide high quality services at lower cost and within schedule requirements. Technical assistance will be provided in, but not limited to:

- Industrial safety and health
- Quality Assurance
- Training for specialized equipment, operations, and techniques
- Prequalification of subcontractor-owned equipment for use on the INEEL site
- Overviews of federal, state, and local regulations or DOE Orders that regulate a contractor's performance while working on the INEEL site

7. Subcontract Flowdown

BBWI incorporates the flowdown clause requirements of FAR 52.219 as applicable and shall ensure subcontractors with awards of \$500,000, or \$1,000,000 for construction adopt a plan similar to this one. The BBWI Small Business Officer will be responsible for implementing and monitoring compliance with these plans through the submission of periodic reports, supplier meetings, and or facility visits.

8. Reports, Studies, and Surveys

BBWI will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports to allow the government to determine the extent of our compliance with this Subcontracting Plan, (iii) submit SF 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms as provided in agency regulations, and (iv) ensure that our subcontractors agree to submit SF 294 and SF 295.

9. Records

BBWI agrees to maintain records to document compliance with the goals and requirements of its subcontracting plan, including but not limited to:

- Solicitation source lists, market surveys, and other data that identify small business, HUBZone small business, small disadvantaged and 8(a) business, women-owned small business, and Native-American small business concerns.
- Organizations contacted in an attempt to locate new qualified sources.
- Outreach efforts, i.e. contact with business development associations, SBA offices, government agencies, attendance to conferences and business/trade fairs, chamber meetings, cooperative efforts with the office of Economic Development and Office of Diversity and Compliance.
- Records of internal guidance and encouragement provided to procurement agents, managers, and supervisors such as bulletins, memos, training presentations and workshops.
- Records to support solicitation and award data including market surveys when applicable to seek new small business concerns, and or provide justification why small business concerns were not solicited.

Submitted by:

Craig Cutler
Prime Contract Management

Dated: August 9, 2001

Plan Accepted By:

R. Jeffrey Hoyles, Contracting Officer
Procurement Services Division

Dated: October 18, 2001

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I.32 DEAR 970.5244-1 CONTRACTOR PURCHASING SYSTEM (DEC 2000)

- (a) **General.** The contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause and 48 CFR 970.44. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR 970.4401-1. The contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE contracting officer. DOE will conduct periodic appraisals of the contractor's management of all facets of the purchasing function, including the contractor's compliance with its approved system and methods. Such appraisals will be performed through the conduct of Contractor Purchasing System Reviews in accordance with 48 CFR subpart 44.3, or, when approved by the contracting officer, through the contractor's participation in the conduct of the Balanced Scorecard performance measurement and performance management system. The contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (x) of this clause.
- (b) **Acquisition of utility services.** Utility services shall be acquired in accordance with the requirements of 48 CFR 970.41.
- (c) **Acquisition of Real Property.** Real property shall be acquired in accordance with 48 CFR Subpart 917.74.
- (d) **Advance Notice of Proposed Subcontract Awards.** Advance notice shall be provided in accordance with 48 CFR 970.4401-3.
- (e) **Audit of Subcontractors.** (1) The contractor shall provide for:
- (i) periodic post-award audit of cost-reimbursement subcontractors at all tiers, and
 - (ii) audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.
- (2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The contractor shall provide, in appropriate cases, for the timely involvement of the contractor and the DOE contracting officer in resolution of subcontract cost allowability.
- (3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE contracting officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the contractor.

- (4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR Part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402-3 and 48 CFR 970.3102-3-21(b).
- (f) Bonds and Insurance. (1) The contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102-2(a) for all fixed priced and unit-priced construction subcontracts in excess of \$100,000. The contractor shall consider the use of performance bonds in fixed price nonconstruction subcontracts, where appropriate.
- (2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of \$100,000 a payment bond shall be obtained on Standard Form 25A modified to name the contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).
- (3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts, greater than \$25,000, but not greater than \$100,000, the contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.
- (4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.
- (g) Buy American. The contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225-3 and 48 CFR 52.225-5. The contractor shall forward determinations of nonavailability of individual items to the DOE contracting officer for approval. Items in excess of \$100,000 require the prior concurrence of the Head of Contracting Activity. If, however, the contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the contractor to make determinations of nonavailability for individual items valued at \$100,000 or less.
- (h) Construction and Architect-Engineer Subcontracts. (1) Independent Estimates. A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.
- (2) Specifications. Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."
- (3) Prevention of Conflict of Interest. (i) The contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.
- (ii) The contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.
- (iii) The contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working

relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

- (i) Contractor-Affiliated Sources. Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402-3.
- (j) Contractor-Subcontractor Relationship. The obligations of the contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the contractor, and shall not bind or purport to bind the Government.
- (k) Government Property. Identification, inspection, maintenance, protection, and disposition of Government property shall conform with the policies and principles of 48 CFR Part 45, 48 CFR 945, the Federal Property Management Regulations 41 CFR Chapter 101, the DOE Property Management Regulations 41 CFR Chapter 109, and their contracts.
- (l) Indemnification. Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement Executive.
- (m) Leasing of Motor Vehicles. Contractors shall comply with 48 CFR 8.11 and 48 CFR 908.11.
- (n) Make-or-Buy Plans. Acquisition of property and services shall be obtained on a least-cost basis, consistent with the requirements of the "Make-or-Buy Plan" clause of this contract and the contractor's approved make-or-buy plan.
- (o) Management, Acquisition and Use of Information Resources. Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.
- (p) Priorities, Allocations and Allotments. Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.
- (q) Purchase of Special Items. Purchase of the following items shall be in accordance with the following provisions of 48 CFR 908.71 and the Federal Property Management Regulations, 41 CFR Chapter 101:
 - (1) Motor vehicles-48 CFR 908.7101
 - (2) Aircraft-48 CFR 908.7102
 - (3) Security Cabinets-48 CFR 908.7106
 - (4) Alcohol-48 CFR 908.7107
 - (5) Helium-48 CFR 908.7108
 - (6) Fuels and packaged petroleum products-48 CFR 908.7109

- (7) Coal-48 CFR 908.7110
- (8) Arms and Ammunition-48 CFR 908.7111
- (9) Heavy Water-48 CFR 908.7121(a)
- (10) Precious Metals-48 CFR 908.7121(b)
- (11) Lithium-48 CFR 908.7121(c)
- (12) Products and services of the blind and severely handicapped-41 CFR 101-26.701
- (13) Products made in Federal penal and correctional institutions-41 CFR 101-26.702
- (r) **Purchase vs. Lease Determinations.** Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease vs. purchase determinations. Such determinations shall be made:
 - (1) at time of original acquisition;
 - (2) when lease renewals are being considered; and
 - (3) at other times as circumstances warrant.
- (s) **Quality Assurance.** Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.
- (t) **Setoff of Assigned Subcontractor Proceeds.** Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.
- (u) **Strategic and Critical Materials.** The contractor may use strategic and critical materials in the National Defense Stockpile.
- (v) **Termination.** When subcontracts are terminated as a result of the termination of all or a portion of this contract, the contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR Subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR Subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the contracting officer.
- (w) **Unclassified Controlled Nuclear Information.** Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR part 1017.
- (x) **Subcontract Flowdown Requirements.** In addition to terms and conditions that are included in the prime contract which direct application of such terms and

conditions in appropriate subcontracts, the contractor shall include the following clauses in subcontracts, as applicable:

- (1) Davis-Bacon clauses prescribed in 48 CFR 22.407.
- (2) Foreign Travel clause prescribed in 48 CFR 952.247-70.
- (3) Counterintelligence clause prescribed in 48 CFR 970.0404-4(a).
- (4) Service Contract Act clauses prescribed in 48 CFR 22.1006.
- (5) State and local taxes clause prescribed in 48 CFR 970.2904-1.
- (6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).

**I.55 DEAR 970.5227-12 PATENTS RIGHTS – MANAGEMENT AND OPERATING
CONTRACTS, FOR-PROFIT CONTRACTOR, ADVANCE CLASS WAIVER (NOV 2000)**

(a) DEFINITIONS.

- (1) *DOE licensing regulations* means the Department of Energy patent licensing regulations at 10 CFR Part 781.
- (2) *DOE patent waiver regulations* means the Department of Energy patent waiver regulations at 10 CFR Part 784.
- (3) *Exceptional Circumstance Subject Invention* means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii), and in accordance with 37 CFR Part 401.3(e).
- (4) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).
- (5) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- (6) *Patent Counsel* means DOE Patent Counsel assisting the contracting activity.
- (7) *Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
- (8) *Subject Invention* means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(b) ALLOCATION OF PRINCIPAL RIGHTS.

- (1) *Assignment to the Government.* Except to the extent that rights are retained by the Contractor by the granting of an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.

- (2) *Advance class waiver of Government rights to the Contractor.* DOE may grant to the Contractor an advance class waiver of Government rights in any or all subject inventions, at the time of execution of the contract, such that the Contractor may elect to retain the entire right, title and interest throughout the world to such waived subject inventions, in accordance with the terms and conditions of the advance class waiver. Unless otherwise provided by the terms of the advance class waiver, any rights in a subject invention retained by the Contractor under an advance class waiver are subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.
- (3) *Government license.* With respect to any subject invention to which the Contractor retains title, either under an advance class waiver pursuant to subparagraph (b)(2) or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Government has a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.
- (4) *Foreign patent rights.* If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE, and DOE may grant the Contractor's request, subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.
- (5) *Exceptional circumstance subject inventions.* Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b)(7) of this clause, the Contractor does not have the right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions.
 - (i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions:
 - (A) uranium enrichment technology;
 - (B) storage and disposal of civilian high-level nuclear waste and spent fuel technology; and
 - (C) national security technologies classified or sensitive under

Section 148 of the Atomic Energy Act (42 U.S.C. 2168).

- (ii) Inventions made under any agreement, contract or subcontract related to the following initiatives or programs are exceptional circumstance subject inventions:
 - (A) DOE Steel Initiative and Metals Initiative;
 - (B) U.S. Advanced Battery Consortium; and
 - (C) any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI).
- (iii) DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, programs, initiatives, and/or other classifications for the purpose of defining DOE exceptional circumstance subject inventions.
- (iv) Inventions which fall within DOE's weapons programs, which inventions principally relate to weapons or inherently disclose or suggest a weapons application where such disclosure or suggestion would be detrimental to national security or relate to naval nuclear propulsion are exceptional circumstance inventions.
- (6) *Treaties and international agreements.* Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements identified at Appendix I-55A, to this clause. DOE reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and to effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.
- (7) *Contractor request for greater rights.* The Contractor may request greater rights in an identified subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, in accordance with the DOE patent waiver regulations, by submitting a such a request in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE pursuant to subparagraph (c)(1) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant

such a request by the Contractor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor under a determination of greater rights is subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

- (8) *Contractor employee-inventor rights.* If the Contractor does not elect to retain title to a subject invention or does not request greater rights in a subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE, and DOE may grant or refuse to grant such a request by the Contractor employee-inventor.
- (9) *Government assignment of rights in Government employees' subject inventions.* If a DOE employee is a joint inventor of a subject invention to which the Contractor has rights, DOE may assign or refuse to assign any rights in the subject invention acquired by the Government from the DOE employee to the Contractor, consistent with 48 CFR 27.304-1(d). Unless otherwise provided in the assignment, the rights assigned to the Contractor are subject to the Government license provided for in subparagraph (b)(3) of this clause, and to any provision of this clause applicable to subject inventions in which rights are retained by the Contractor, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the DOE employee, as DOE deems appropriate.

(c) **SUBJECT INVENTION DISCLOSURE, ELECTION OF TITLE, AND FILING OF PATENT APPLICATION BY CONTRACTOR.**

- (1) *Subject invention disclosure.* The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after an inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE shall be in the form of a written report and shall include:
 - (i) the contract number under which the subject invention was made;
 - (ii) the inventor(s) of the subject invention;

- (iii) a description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;
- (iv) the date and identification of any publication, on sale or public use of the invention;
- (v) the date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;
- (vi) a statement indicating whether the subject invention is an exceptional circumstance subject invention, related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;
- (vii) all sources of funding by Budget and Reporting (B&R) code; and
- (viii) the identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Work-for-Others agreements.

Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE under this paragraph are deemed made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908.

- (2) *Publication after disclosure.* After disclosure of the subject invention to the DOE, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.
- (3) *Election by the Contractor under an advance class waiver.* If the Contractor has the right to elect to retain title to subject inventions under an advance class waiver granted in accordance with subparagraph (b)(2) of this clause, and unless otherwise provided for by the terms of the advance class waiver, the Contractor shall elect in writing whether or not to retain title to any subject invention by notifying DOE within two (2) years of the date of the disclosure of the subject invention to DOE, in

accordance with subparagraph (c)(1) of this clause. The notification shall identify the advance class waiver, state the countries, including the United States, in which rights are retained, and certify that the subject invention is not an exceptional circumstance subject invention or subject to a treaty or international agreement. If a publication, on sale or public use of the subject invention has initiated the 1-year statutory period under 35 U.S.C. 102(b), the period for election may be shortened by DOE to a date that is no more than sixty (60) days prior to the end of the 1-year statutory period.

- (4) *Filing of patent applications by the Contractor under an advance class waiver.* If the Contractor has the right to retain title to a subject invention in accordance with an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (b)(7) of this clause, and unless otherwise provided for by the terms of the advance class waiver or greater rights determination, the Contractor shall file an initial patent application claiming the subject invention to which it retains title either within one (1) year after the Contractor's election to retain or grant of title to the subject invention or prior to the end of any 1-year statutory period under 35 U.S.C. 102(b), whichever occurs first. Any patent applications filed by the Contractor in foreign countries or international patent offices shall be filed within either ten (10) months of the corresponding initial patent application or, if such filing has been prohibited by a Secrecy Order, within six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications.
- (5) *Submission of patent information and documents.* If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel the following information and documents:
 - (i) the filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);
 - (ii) an executed and approved instrument fully confirmatory of all Government rights in the subject invention; and
 - (iii) the patent number, issue date, and a copy of any issued patent claiming the subject invention.
- (6) *Contractor's request for an extension of time.* Requests for an extension of the time to disclose a subject invention, to elect to retain title to a subject invention, or to file a patent application under subparagraphs (c)(1), (3), and (4) of this clause may be granted at the discretion of Patent Counsel or DOE.

- (7) *Duplication and disclosure of documents.* The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to 35 U.S.C. 205 and 37 CFR Part 40.

(d) CONDITIONS WHEN THE GOVERNMENT MAY OBTAIN TITLE NOTWITHSTANDING AN ADVANCE CLASS WAIVER.

- (1) *Return of title to a subject invention.* If the Contractor requests that DOE acquire title or rights from the Contractor in a subject invention, including an exceptional circumstance subject invention, to which the Contractor retained title or rights under subparagraph (b)(2) or subparagraph (b)(7) of this clause, DOE may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE's sole discretion.
- (2) *Failure to disclose or elect to retain title.* Title vests in DOE and DOE may request, in writing, a formal assignment of title to a subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE, if the Contractor elects not to retain title to the subject invention under an advance class waiver, or the Contractor fails to disclose or fails to elect to retain title to the subject invention within the times specified in subparagraphs (c)(1) and (c)(3) of this clause.
- (3) *Failure to file domestic or foreign patent applications.* In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c)(4) of this clause, DOE may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE; provided, however, that if the Contractor has filed a patent application in any country after the times specified in subparagraph (c)(4) of this clause, but prior to its receipt of DOE's written request for title, the Contractor continues to retain title in that country.
- (4) *Discontinuation of patent protection by the Contractor.* If the Contractor decides to discontinue the prosecution of a patent application, the payment of maintenance fees, or the defense of a subject invention in a reexamination or opposition proceeding, in any country, DOE may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE.
- (5) *Termination of advance class waiver.* DOE may request, in writing, title to any subject inventions from the Contractor, and the Contractor shall convey title to the subject inventions to DOE, if the advance class waiver granted under subparagraph (b)(2) of this clause is terminated under paragraph (u) of this clause.

(e) MINIMUM RIGHTS OF THE CONTRACTOR

Request for a Contractor license. Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c)(1) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE may grant or refuse to grant such a request by the Contractor. If DOE grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.

Transfer of a Contractor license. DOE shall approve any transfer of the Contractor's license in a subject invention, and DOE may determine that the Contractor's license is non-transferable, on a case-by-case basis.

Revocation or modification of a Contractor license. DOE may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and DOE licensing regulations. DOE may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensees or its domestic subsidiaries or affiliates have achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.

Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR Part 404 and DOE licensing regulations.

(f) CONTRACTOR ACTION TO PROTECT THE GOVERNMENT'S INTEREST

(1) *Execution and delivery of title or license instruments.* The Contractor agrees to execute or have executed, and to deliver promptly to DOE all instruments necessary to accomplish the following actions:

(i) establish or confirm the Government's rights throughout the world

- in subject inventions to which the Contractor elects to retain title;
- (ii) convey title in a subject invention to DOE pursuant to subparagraph (b)(5) and paragraph (d) of this clause; or
 - (iii) enable the Government to obtain patent protection throughout the world in a subject invention to which the Government has title.
- (2) *Contractor employee agreements.* The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- (3) *Contractor procedures for reporting subject inventions to DOE.* The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation and approval of the effectiveness of such procedures by the Contracting Officer.
- (4) *Notification of discontinuation of patent protection.* With respect to any subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall notify Patent Counsel of any decision to discontinue the prosecution of a patent application, payment of maintenance fees, or defense of a subject invention in a reexamination or opposition proceeding, in any country, not less than thirty (30) days before the expiration of the response period for any action required by the corresponding patent office.
- (5) *Notification of Government rights.* With respect to any subject invention to which the Contractor has title, the Contractor agrees to include, within the specification of any United States patent application and within any patent issuing thereon claiming a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy. The Government has certain rights in the invention."

- (6) *Avoidance of Royalty Charges.* If the Contractor licenses a subject invention, the Contractor agrees to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the subject invention to any party.
 - (7) *DOE approval of assignment of rights.* Rights in a subject invention in the United States may not be assigned by the Contractor without the approval of DOE.
 - (8) *Small business firm licensees.* The Contractor shall make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and may give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision as to whether to give a preference in any specific case is at the discretion of the Contractor.
 - (9) *Contractor licensing of subject inventions.* To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.
- (g) **SUBCONTRACTS.**
- (1) *Subcontractor subject inventions.* The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.
 - (2) *Inclusion of patent rights clause - non-profit organization or small business firm subcontractors.* Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph (b)(5) of this clause.
 - (3) *Inclusion of patent rights clause - subcontractors other than non-profit organizations or small business firms.* Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall

include the patent rights clause at 48 CFR 952.227-13, suitably modified to identify the parties and any applicable exceptional circumstance, in any contract for experimental, developmental, demonstration or research work.

- (4) *DOE and subcontractor contract.* With respect to subcontracts at any tier, DOE, the subcontractor and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.
 - (5) *Subcontractor refusal to accept terms of patent rights clause.* If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such refusal and including relevant information for expediting disposition of the matter; and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.
 - (6) *Notification of award of subcontract.* Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.
 - (7) *Identification of subcontractor subject inventions.* If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.
- (h) **REPORTING ON UTILIZATION OF SUBJECT INVENTIONS.**

Upon request by DOE, the Contractor agrees to submit periodic reports, no more frequently than annually, describing the utilization of a subject invention or efforts made by the Contractor or its licensees or assignees to obtain utilization of the subject invention. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information reasonably specified by DOE. Upon request by DOE, the Contractor also agrees to provide reports in connection with any march-in proceedings undertaken by DOE, in accordance with paragraph (j) of this clause. If any data or information reported by the Contractor in accordance with this provision is considered privileged and confidential by the Contractor, its licensee, or assignee and the Contractor properly marks the data or information

privileged or confidential, DOE agrees not to disclose such information to persons outside the Government, to the extent permitted by law.

(i) PREFERENCE FOR UNITED STATES INDUSTRY.

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

(j) MARCH-IN RIGHTS.

With respect to any subject invention to which the Contractor has elected to retain or is granted title, DOE may, in accordance with the procedures in the DOE patent waiver regulations, require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances. If the Contractor, assignee or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that –

- (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
- (2) Such action is necessary to alleviate health or safety needs that are not reasonably satisfied by the Contractor, assignee, or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by government regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
- (4) Such action is necessary because the agreement to substantially manufacture in the United States and required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) COMMUNICATIONS.

The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel identified in the contract.

(l) REPORTS.

- (1) *Interim reports.* Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE in accordance with the requirements of subparagraphs (f)(3) and (f)(4) of this clause.
- (2) *Final reports.* Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.

(m) FACILITIES LICENSE.

In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(n) ATOMIC ENERGY.

- (1) *Pecuniary awards.* No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

- (2) *Patent Agreements.* Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (o)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(o) CLASSIFIED INVENTIONS.

- (1) *Approval for filing a foreign patent application.* The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.
- (2) *Transmission of classified subject matter.* If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.
- (3) *Inclusion of clause in subcontracts.* The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(p) EXAMINATION OF RECORDS RELATING TO INVENTIONS.

- (1) *Contractor compliance.* Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.
- (2) *Unreported inventions.* If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

- (3) *Confidentiality.* Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.
- (4) *Power of inspection.* With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(q) PATENT FUNCTIONS.

Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(r) EDUCATIONAL AWARDS SUBJECT TO 35 U.S.C. 212.

The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) any person who is subject to treaties or international agreements as set forth in paragraph (b)(6) of this clause or to agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

(s) ANNUAL APPRAISAL BY PATENT COUNSEL.

Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

(t) PUBLICATION.

The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract, to ensure such release or publication does not adversely affect the patent rights of DOE or the Contractor.

(u) TERMINATION OF CONTRACTOR'S ADVANCE CLASS WAIVER.

If a request by the Contractor for an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (c) of this clause contains false material statements or fails to disclose material facts, and DOE relies on the false statements or omissions in granting

the Contractor's request, the waiver or grant of any Government rights (in whole or in part) to the subject invention(s) may be terminated at the discretion of the Secretary of Energy or designee. Prior to termination, DOE shall provide the Contractor with written notification of the termination, including a statement of facts in support of the termination, and the Contractor shall be allowed thirty (30) days, or a longer period authorized by the Secretary of Energy or designee for good cause shown in writing by the Contractor, to show cause for not terminating the waiver or grant. Any termination of an advance class waiver or a determination of greater rights is subject to the Contractor's license as provided for in paragraph (f) of this clause.

PART III – LIST OF DOCUMENTS AND OTHER ATTACHMENTS
 SECTION J – LIST OF ATTACHMENTS
 ATTACHMENT J-A, SCHEDULE A-1

BBWI LIST OF KEY PERSONNEL

KEY POSITION	NAME
General Manager, Spent Nuclear Fuel and Waste Management Operations	CLARK, Arthur
Executive Vice President, Deputy General Manager and Chief Operating Officer	DIVJAK, Paul H.
Vice President, Technical Services	ETHRIDGE, Jerry L.
General Manager, Nuclear Operations and Operational Excellence	GAY, William W. III
Associate Laboratory Director, Strategic Management and Chief Scientist	JACOBSEN, Richard T.
Vice President and Deputy Laboratory Director	KEARNS, Paul K.
Director, Specific Manufacturing Capability	KUDSIN, David L.
Director, Test Reactor Area	MIDGETT, J. Chris
General Manager, Environment, Safety, Health and Quality Assurance	NUGENT, Richard C.
Managing Counsel	OLSEN, Mark D.
Director, Communications	PHELPS, Penny M.
President, General Manager and Laboratory Director	SHIPP, Billy D.
Manager of Projects, Environmental Restoration	Vacant
Director, Human Resources	SIKORSKI, Bernadine C.
Vice President, Environmental Management	STIGER, Susan G.
Manager of Projects, Waste Management	SYGITOWICZ, Leonard S.
Vice President, Nuclear Programs and Site Operations	WATKINS, E. Lee III
Vice President and Chief Financial Officer	WILLIAMS, Robert E.