

Department of Energy

contract in accordance with requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract.

970.5235-1 Federally funded research and development center sponsoring agreement.

As prescribed in 48 CFR 970.3501-4, the contracting officer shall insert the following clause:

Federally Funded Research and Development Center Sponsoring Agreement (DEC 2000)

(a) Pursuant to 48 CFR 35.017-1, this contract constitutes the sponsoring agreement between the Department of Energy and the contractor, which establishes the relationship for the operation of a Department of Energy sponsored Federally Funded Research and Development Center (FFRDC).

(b) In the operation of this FFRDC, the contractor may be provided access beyond that which is common to the normal contractual relationship, to Government and supplier data, including sensitive and proprietary data, and to Government employees and facilities needed to discharge its responsibilities efficiently and effectively. Because of this special relationship, it is essential that the FFRDC be operated in the public interest with objectivity and independence, be free from organizational conflicts of interest, and have full disclosure of its affairs to the Department of Energy.

(c) Unless otherwise provided by the contract, the contractor may accept work from a nonsponsor (as defined in 48 CFR 35.017) in accordance with the requirements and limitations of DOE Order 481.1, Work for Others (Non-Department of Energy Funded Work) (see current version).

(d) As an FFRDC, the contractor shall not use its privileged information or access to government facilities to compete with the private sector. Specific guidance on restricted activities is contained in DOE Order 481.1.

(End of clause)

970.5236-1 Government facility subcontract approval.

As prescribed in 48 CFR 970.3605-2, insert the following clause:

GOVERNMENT FACILITY SUBCONTRACT
APPROVAL (DEC 2000)

Upon request of the contracting officer and acceptance thereof by the contractor, the contractor shall procure, by subcontract, the construction of new facilities or the alteration or repair of Government-owned facilities at the plant. Any subcontract entered into under this paragraph shall be subject to

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the written approval of the contracting officer and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work.

(End of clause)

970.5237-2 Facilities management.

As prescribed in 48 CFR 970.3770-2, insert the following clause:

FACILITIES MANAGEMENT (DEC 2000)

Copies of DOE Directives referenced herein are available from the contracting officer.

(a) *Site development planning.* The Government shall provide to the contractor site development guidance for the facilities and lands for which the contractor is responsible under the terms and conditions of this contract. Based upon this guidance, the contractor shall prepare, and maintain through annual updates, a Long-Range Site Development Plan (Plan) to reflect those actions necessary to keep the development of these facilities current with the needs of the Government and allow the contractor to successfully accomplish the work required under this contract. In developing this Plan, the contractor shall follow the procedural guidance set forth in the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall use the Plan to manage and control the development of facilities and lands. All plans and revisions shall be approved by the Government.

(b) *General design criteria.* The general design criteria which shall be utilized by the contractor in managing the site for which it is responsible under this contract are those specified in the applicable DOE Directives in the 6430, Design Criteria, series listed elsewhere in this contract. The contractor shall comply with these mandatory, minimally acceptable requirements for all facility designs with regard to any building acquisition, new facility, facility addition or alteration or facility lease undertaken as part of the site development activities of paragraph (a) of this clause. This includes on-site constructed buildings, pre-engineered buildings, plan-fabricated modular buildings, and temporary facilities. For existing facilities, original design criteria apply to the structure in general; however, additions or modifications shall comply with this directive and the associated latest editions of the references therein. An exception may be granted for off-site office space being leased by the contractor on a temporary basis.

(c) *Energy management.* The contractor shall manage the facilities for which it is responsible under the terms and conditions of

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this contract in an energy efficient manner in accordance with the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall develop a 10-year energy management plan for each site with annual reviews and revisions. The contractor shall submit an annual report on progress toward achieving the goals of the 10-year plan for each individual site, and an energy conservation analysis report for each new building or building addition project. Any acquisition of utility services by the contractor shall be conducted in accordance with 48 CFR 970.41.

(d) *Subcontract Requirements.* To the extent the contractor subcontracts performance of any of the responsibilities discussed in this clause, the subcontract shall contain the requirements of this clause relative to the subcontracted responsibilities.

(End of clause)

970.5242-1 Penalties for unallowable costs.

As prescribed in 48 CFR 970.4207-03-70, insert the following clause:

PENALTIES FOR UNALLOWABLE COSTS (DEC 2000)

(a) Contractors which include unallowable cost in a submission for settlement for cost incurred, may be subject to penalties.

(b) If, during the review of a submission for settlement of cost incurred, the contracting officer determines that the submission contains an expressly unallowable cost or a cost determined to be unallowable prior to the submission, the contracting officer shall assess a penalty.

(c) Unallowable costs are either expressly unallowable or determined unallowable.

(1) An expressly unallowable cost is a particular item or type of cost which, under the express provisions of an applicable law, regulation, or this contract, is specifically named and stated to be unallowable.

(2) A cost determined unallowable is one which, for that contractor,

(i) was subject to a contracting officer's final decision and not appealed;

(ii) the Department's Board of Contract Appeals or a court has previously ruled as unallowable; or

(iii) was mutually agreed to be unallowable.

(d) If the contracting officer determines that a cost submitted by the contractor in its submission for settlement of cost incurred is:

(1) expressly unallowable, then the contracting officer shall assess a penalty in an amount equal to the disallowed cost allocated to this contract plus interest on the paid portion of the disallowed cost. Interest

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shall be computed from the date of overpayment to the date of repayment using the interest rate specified by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97); or

(2) determined unallowable, then the contracting officer shall assess a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(e) The contracting officer may waive the penalty provisions when

(1) the contractor withdraws the submission before the formal initiation of an audit of the submission and submits a revised submission;

(2) the amount of the unallowable costs allocated to covered contracts is \$10,000 or less; or

(3) the contractor demonstrates to the contracting officer's satisfaction that:

(i) it has established appropriate policies, personnel training, and an internal control and review system that provides assurances that unallowable costs subject to penalties are precluded from the contractor's submission for settlement of costs; and

(ii) the unallowable costs subject to the penalty were inadvertently incorporated into the submission.

(End of clause)

970.5243-1 Changes.

As prescribed in 48 CFR 970.4302-1, the contracting officer shall insert the following clause in all management and operating contracts:

CHANGES (DEC 2000)

(a) *Changes and adjustment of fee.* The contracting officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of this contract requiring additional work or directing the omission of, or variation in, work covered by this contract. If any such direction results in a material change in the amount or character of the work described in the "Statement of Work," an equitable adjustment of the fee, if any, shall be made in accordance with the agreement of the parties and the contract shall be modified in writing accordingly. Any claim by the contractor for an adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the contractor of the notification of change; provided, however, that the contracting officer, if it is determined that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. A failure to agree on an equitable adjustment under this clause shall be deemed to be a dispute within the meaning of the clause entitled "Disputes."