

TERMS & CONDITIONS

For Orders Issued Under Financial Assistance Awards To “Not For-Profit” Entities

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A. GENERAL PROVISIONS

A-1 Definitions: As used throughout this documents, the following terms shall have the meanings set forth below:

- a) "Buyer" means GENERAL ATOMICS, the legal entity issuing this Order.
- b) "Seller" or "Recipient" means the legal entity executing this Order with the Buyer and who will furnish the work or services provided for herein.
- c) "Award", "Financial Assistance Award", "Contract", "Agreement", means "Order", this contractual instrument, including changes, of which these terms and conditions are a part thereof.
- d) Except as otherwise provided in this Order, the term "subcontracts" includes purchase orders under this Order, but does not include Seller's employment relationships.
- e) All references to "works," "supplies," or "articles" shall include "services," if this Order, wholly or in part, provides for the furnishing of services.

A-2 Independent Contractor: Seller is, and shall be deemed to be, an independent contractor and not an agent or employee of Buyer.

A-3 Packing and Shipment: Deliveries shall be made as specified, without additional charge for boxing, crating, carting, or storage unless otherwise specified. Goods shall be suitably packaged to secure the lowest transportation costs and in accordance with the requirements of common carriers and be packaged to ensure against damage from weather or transportation. Buyer's Order number and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each shipment. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

A-4 Inspection: Buyer shall be permitted to inspect Seller's manufacture, fabrication, and testing. For these purposes, Seller shall provide, upon reasonable advance notice, access to Seller's facilities to enable Buyer and its representatives to perform inspections and to determine Seller's orderly, timely, and satisfactory compliance with the requirements of the Order.

Inspections and design or planning reviews performed or not performed by Buyer shall not relieve Seller from responsibility to perform all inspection tests and quality assurance measures nor otherwise to comply with the requirements of this Order.

Any work or item that fails to meet the requirements of the Order may be rejected. If delivered to Buyer or destination, rejected work or items shall be removed promptly by Seller.

A-5 Delivery: *TIME OF DELIVERY UNDER THIS ORDER IS OF THE ESSENCE.* If Seller fails to adhere to the delivery schedule, and Buyer must therefore demand a more expeditious means of transportation than specified in the Order, Seller shall be liable for the difference in such transportation cost. This in no way shall affect Buyer's other rights.

A-6 Warranty: Seller warrants that products ordered to specifications hereunder will conform to the specifications and to any drawings, samples, or other description furnished or adopted by Buyer in connection with this Order. If products are not ordered to such specifications, Seller warrants that they will be fit for the purpose intended. All articles purchased hereunder are warranted to be merchantable, to be of good material and workmanship, and to be free from defect for a period of one year after delivery and acceptance by Buyer. All such warranties and guarantees, if any, shall survive inspection or test, acceptance, and payment. All statutory warranties shall apply. Warranties shall run to Buyer, its successors, assigns, and customers.

Seller further warrants that all work and services called for herein shall comply with the requirements of this Order and shall conform to the highest standards applicable to them.

A-7 Special Tools: If prices are stated separately for dies, tools, and/or patterns acquired by Seller for the purpose of filling this Order, such dies, tools, and/or patterns shall be properly identified by Seller as such. When this Order has been completed, such tools shall be disposed of as Buyer may direct.

A-8 Payment: Payment date and cash discount period shall be calculated from the date of Buyer's receipt of an acceptable invoice or Buyer's acceptance of the goods and supporting documentation at destination, whichever last occurs.

If this is a cost reimbursement type of order or if this Order specifies fixed hourly rates for services, a statement of accounts or invoice, in triplicate, shall be sent to Buyer's Accounts Payable Department monthly. Invoices tendered for payment shall show the weekly rate of expenditure by labor classification as well as other costs allowable hereunder. Delays in receiving a statement or invoice, and also errors and omissions on the statement, will be considered just cause for deferring payment without losing discount privilege.

A-9 Seller's Obligations for "Not-To-Exceed" Orders: If this Order specifies payments by Buyer as "not-to-exceed" a stipulated amount, then:

a) Seller agrees to perform its obligations hereunder within that limit. If during performance hereunder, Seller's incurred costs equal 75% of the "not-to-exceed" value it shall promptly notify Buyer in writing indicating incurred cost and anticipated cost to complete.

b) Notwithstanding the notification requirements set forth above, if Seller at any time has reason to believe that the total price to Buyer for performance hereunder will be greater than the "not-to-exceed" value it shall promptly report the belief to the Buyer.

c) Buyer shall not be obligated to pay Seller more than the "not-to-exceed" value, unless specifically authorized in writing by an authorized representative of Buyer's Purchasing Department.

A-10 Writings Required:

a) No notice, Order, direction, determination, requirement, consent, approval, or ratification under this Order shall be of any effect unless in writing.

b) No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Order.

c) No extra charge of any kind will be allowed unless specifically agreed to in writing by Buyer's authorized Purchasing Representative.

A-11 Non-Waiver: The failure of Buyer to insist, in one or more instances upon strict performance or to exercise any rights shall not waive or relinquish to any extent Buyer's right to assert or rely upon any such terms or rights on any future occasion.

A-12 Stop Work Order: The Buyer may, at any time, by written order to Seller, require Seller to stop all or part of the work called for by this Order for a period of ninety (90) days after the Order is issued to Seller. Within ninety (90) days after a "Stop Work Order" is delivered to Seller, or within any extension of the period to which the parties have agreed, Buyer shall either: (1) cancel the "Stop Work Order" and direct Seller to resume work, in which event Seller shall receive an equitable adjustment, provided a claim for such an adjustment shall be submitted by Seller within thirty (30) days after the end of the period of work stoppage; or (2) terminate the work and this Order or part thereof.

A-13 Force Majeure: Neither Seller nor Buyer shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to: (1) acts of God, war, riot, embargos, acts of civil or military authorities, fire, flood, accidents, strikes, epidemics, or unusually severe weather affecting either party; (2) causes beyond their control and which are not foreseeable or causes beyond the reasonable control of their subcontractors which are not foreseeable.

A-14 Termination for Convenience: Buyer may, at its option, terminate this Order, in whole or in part, for Buyer's convenience, by written, fax, e-mail or telegraphic notice to Seller. Upon termination hereunder, Seller shall (1) forthwith stop work under this Order on the terminated portion thereof and place no further orders or lower-tier subcontracts hereunder, (2) terminate or, if so directed by Buyer, assign to Buyer, orders or subcontracts outstanding hereunder, and (3) take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest, and direct subcontractors to do the same. Within three (3) months after receipt of such notice or termination, Seller will prepare and submit to Buyer in writing its claim for reimbursement of costs resulting from the termination. Such claim shall include termination costs, if any, from lower-tier subcontractors and, is to be in accordance with the requirements of Buyer hereinafter set forth. If the parties cannot agree within a reasonable time upon the amount of fair

compensation to Seller for Seller's performance of the terminated Order, Buyer will pay Seller, without duplication:

a) The Order price for articles that have been completed and delivered to Buyer or otherwise disposed of as Buyer may direct. In the event the Order price includes packaging and transportation costs and the completed articles have not been packaged and transported at the time of termination, an equitable adjustment will be made to the Order price for such articles.

b) The actual costs incurred by Seller prior to termination which are properly allocable or apportionable, under good commercial accounting practices consistent with Seller's usual accounting procedures, to the terminated portion of this Order other than articles whose price is paid under subparagraph (a), except that when the Order provides for progress payments, settlement of Seller's costs shall be on the basis of actual progress made through the termination date. Notwithstanding the provisions of this subparagraph (b), if this Order provides for fixed hourly rates, Buyer shall pay Seller without duplication the hourly rates fixed in the Order times the number of hours actually expended in conformity with the provisions of this Order.

c) Reasonable expenses actually incurred by Seller in settling Seller's terminated orders and subcontracts hereunder, as approved by Buyer, and in protecting property in which Buyer has or may have an interest.

Payments under this clause, including all payments made under this Order prior to the termination, shall in no event exceed the aggregate price specified in this Order. Seller will transfer title to and deliver on Buyer's instructions any property the cost of which is reimbursed under (b) above or with Buyer's approval, may retain the same at an agreed price or sell at any approved price and credit or pay the amount so agreed or received as Buyer directs. Buyer may audit all elements of any termination claim including all elements of claims submitted under any orders and subcontracts that Seller has terminated in accordance with this clause.

In no event will Seller or its subcontractors or suppliers be entitled to reimbursement for any cost incurred subsequent to the effective date of termination except for those allowed by subparagraph (c) above, nor shall Seller or its subcontractors or suppliers be allowed to recover any cost incurred prior to termination unless such cost was allocated to this Order in accordance with usual and customary accounting procedures applicable in the absence of termination of orders. Specifically, but not exclusively, no recovery will be allowed of any amounts representing anticipatory profits, unabsorbed administrative expenses, or other overhead costs, or continuing costs.

A-15 Termination for Default:

a) Buyer may terminate all or any part of this Order if Seller breaches any of the terms hereof including warranties or fails to make progress so as to endanger performance of this Order in accordance with its terms. Termination hereunder shall be effected by written notice to Seller.

b) In the event Buyer terminates this Order in whole or in part as provided hereinabove, Buyer may procure, upon such terms and in such manner as Buyer deems appropriate, supplies or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs for such similar supplies or services, provided that Seller shall continue the performance of this Order to the extent not terminated under the provisions of this clause.

c) Except with respect to defaults of subcontractors at any tier, Seller shall not be liable for excess costs if the failure to perform the Order arises out of causes beyond the control and without the fault or negligence of Seller. If the failure to perform is caused by the default of a subcontractor at any tier, and if such default arises out of causes beyond the control of both Seller and the subcontractor, and without the fault or negligence of either of them, Seller shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the required delivery schedule.

d) If this Order is terminated for default, Buyer may require Seller to transfer to Buyer title and possession in the manner and to the extent directed by Buyer of (1) any completed items, and (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings,

information, and contract rights (hereinafter called "manufacturing materials") as Seller has specifically produced or acquired for the performance of such part of this Order as has been terminated; and Seller shall, upon direction of Buyer, protect and preserve property in possession of Seller in which Buyer has an interest. Payment for completed items delivered to and accepted by Buyer shall be at the Order price. Payment for manufacturing materials delivered to and accepted by Buyer and for the protection and preservation of property shall be in the amount agreed upon by Seller and Buyer. Buyer may withhold from amounts otherwise due Seller for such completed supplies or manufacturing materials, such sum as Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.

e) If, after notice of termination of this Order under the provisions of this clause, it is determined for any reason that Seller was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause.

f) The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any others provided by law or this Order.

A-16 Proprietary Information:

a) Seller shall not, during the term of this Order, and for a period of five (5) years thereafter, divulge to anyone other than Buyer (or such other persons as Buyer designates in writing); or, except in the performance of this Order, make use of information or knowledge relating to details of Buyer's business or that of its subsidiaries, suppliers, or customers, of any other confidential or proprietary information of Buyer or its subsidiaries, suppliers, or customers which Seller shall have obtained because of this Order. Seller shall take all reasonable measures to protect such confidential or proprietary information, which measures shall be at least equal to those with which Seller protects its own confidential or proprietary information. All proprietary rights embodied in designs, tools, patterns, drawings, information data, and equipment supplied by Buyer under this Order are reserved to Buyer and their use is restricted to the work to be performed hereunder. Seller agrees to retain in confidence and return to Buyer on completion of the Order all designs, drawings, specifications, and technical information of every kind belonging to Buyer and furnished to Seller in connection with this Order.

Notwithstanding the foregoing, Seller shall have no obligation with respect to any confidential or proprietary information which (1) was written record in Seller's files prior to its first receipt from Buyer (2) is at the date hereof, or at any time hereafter becomes a matter of public knowledge or literature by means other than the act, omission, or fault of Seller (3) is at any time lawfully received by Seller from a third person under circumstances permitting its disclosure.

b) No private data or proprietary designs, ideas, or information of Seller are to be provided to Buyer. Buyer accepts no obligation of confidence to Seller with respect to ideas, data, information, or designs divulged by Seller or equipment, operations, or designs witnessed by Buyer at Seller's plant. However, this provision shall not constitute any form of license hereunder if there is a validly issued patent in effect. Seller authorizes Buyer to reproduce Seller's copyrighted material, at no cost to Buyer, for the purpose of including such material in documents provided to Buyer's customers, or prospective customers, in the normal course of Buyer's business. In the absence of further written agreement duly signed by both parties to this Order, all information which passes from Seller to Buyer shall be treated as non-confidential, including material provided in written form and marked by the originator as being confidential or private.

A-17 Taxes: Unless Buyer furnishes a valid exemption certificate, Buyer will bear all sales, use, value added or similar taxes now or hereafter properly imposed in respect to this transaction.

Seller agrees to notify the Buyer promptly of any proposed or contemplated assessment of additional taxes to be borne by Buyer under paragraph 1 of this clause, as the result of any audit or other tax review by an applicable governmental agency, prior to payment of such proposed additional taxes. Buyer's obligation to pay such additional tax is subject to such notification permitting Buyer to review the findings of the alleged tax increase prior to Seller's payment.

Seller further agrees to take all steps, on account of Buyer, necessary to secure the refund of any taxes borne by Buyer under paragraph 1 of this clause, when such taxes paid by Buyer in whole or in part are subsequently deemed inapplicable.

A-18 Advertising: Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish to Buyer the articles herein ordered.

A-19 Precautions, Indemnity, and Insurance: Seller will defend Buyer at Seller's expense from any suit or action, criminal or civil, arising out of Seller's performance, or that of its officers, directors, employees or agents.

Seller will procure and carry:

a) Automobile liability insurance protecting the Seller from automobile bodily injury, property damage liability with limits of at least \$1,000,000 per person, \$1,000,000 per occurrence for bodily injury, and \$1,000,000 per occurrence for property damage.

b) A broad form comprehensive general liability insurance policy which includes property damage and contractual and products liability endorsement with limits no lower than \$1,000,000. Such policy shall be on an Occurrence Form.

c) Professional liability coverage with a limit no less than \$1,000,000, if this Order is for Engineering or other Professional Service,

d) Such insurance of employees as may be required by any Workers' Compensation act or other law, regulation or ordinance that may apply in the circumstances and shall, at Buyer's request, furnish certificates of such insurance to Buyer.

For (a) and (b) above, such policies shall name Buyer as additional insured when requested by Buyer.

At Buyer's request, Seller shall furnish to Buyer certificates of insurance setting forth the amount(s) of coverage, policy number(s) and date(s) of expiration for insurance maintained by Seller and, if further requested by Buyer, such certificates will provide that Buyer shall receive thirty (30) days' prior written notification from the insurer of any termination or reduction in the amount or scope of coverages. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller of its obligations or liabilities under this order. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any goods or services covered by this Order and shall not be required to make further payments except for conforming goods delivered or services rendered prior to cancellation.

If Seller's work under this Order involves operations by Seller on Buyer's premises, Seller agrees to take all proper precautions in its operations against the occurrence of injury to any person or damage to property, and to be responsible for and to hold Buyer harmless from all loss and any claim by reason of injury, including death, to any person or damage to property in connection with such work, and from all fines, penalties, or loss incurred by reason of failure to comply with this clause.

A-20 Assignment: Seller will not assign or transfer this Order, in whole or in part, nor any payments due or to become due hereunder, without the prior written consent of the Buyer. In the event written consent is granted, Seller shall promptly supply Buyer two copies of any such assignment. Payment to an assignee of any claim hereunder shall be subject to set-off or recoupment for any present or future claims which Buyer may have against Seller.

A-21 Applicable Law: This Order and any dispute arising hereunder shall be governed by the substantive and procedural laws of the State of California, except, however, that California's Choice of Law provisions shall not apply.

A-22 Attorney Fees: If it is necessary for either party to obtain legal representation to enforce any part of this Order, the non-prevailing party agrees to bear the court costs and the attorney fees of the prevailing party.

A-23 Precedence: Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) typed provisions on the face of the purchase order, (2) Buyer's purchase order attachments, including these terms and conditions, (3) other specifications or documents incorporated by reference, (4) Seller's proposal or other documents only when specifically referenced on the Order. In the event of any conflicting provisions, the Seller shall promptly notify Buyer thereof.

A-24 Entire Agreement: These terms and those on the face of the Order in which this form is referenced and any specifications or drawings incorporated constitute the entire agreement of the parties and supersede all previous oral or written representations, agreements, and commitments.

A-25 Reporting of Defects And Noncompliance: If this Order or any specification or drawing attached to this Order indicates that this procurement is for a basic component, or design for a basic component, or for materials, supplies, or hardware, which will be used in a nuclear reactor, facility or activity licensed by the Nuclear Regulatory Commission (NRC), the provisions of 10 CFR 21 shall apply to this Order and are hereby incorporated by reference with the same force and effect as if fully recited herein.

In the event this Order or the specifications or drawings attached hereto fail to specify the use of the items covered by this Order as set forth above, and the Seller has knowledge that any item covered by this Order will, in fact, be used in an NRC-licensed nuclear reactor, facility or activity, the provisions of 10 CFR 21 shall apply and are hereby incorporated by reference with the same force and effect as if fully recited herein.

B. ADDITIONAL PROJECT SPECIFIC TERMS AND CONDITIONS

B-1 Notice Regarding the Purchase of American-Made Equipment and Products – Sense of Congress

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Order should be American-made.

B-2 Notice Regarding Unallowable Costs and Lobbying Activities (Modified)

Sellers are cautioned to carefully review the allowable cost and other provisions applicable to expenditures under their particular award instruments. If funds are spent for purposes or in amounts inconsistent with the allowable cost or any other provisions governing expenditures in an award instrument, the Buyer and/or Government may pursue a number of remedies against the Seller, including in appropriate circumstances, recovery of such funds, termination of the Order, suspension or debarment of the Seller from future Orders, and criminal prosecution for false statements.

Particular care should be taken by the Seller to comply with the provisions prohibiting the expenditure of funds for lobbying and related activities. Funds may be used to describe and promote the understanding of scientific and technical aspects of specific energy technologies, but not to encourage or support political activities such as the collection and dissemination of information related to potential, planned or pending legislation.

B-3 Appropriations Act Restrictions (Modified)

Energy and Water Development Appropriations Act: Lobbying Restriction (Energy and Water Act)

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

B-4 Foreign Visits and Assignments

Visits and assignment by foreign nationals to the DIII-D facility shall be conducted in accordance with the requirements contained in DOE N 142.1 and DOE- P 142.1, Unclassified Foreign Visits and Assignments Program, or any subsequent version of the Order in effect at the time of award.

B-5 Publications/Presentations

Technical papers generated under this Order intended for publication in technical journals, academic or professional publications, and conference or symposia proceedings should be reviewed by the Buyer or the Buyer's designated representative for formal publication release. Data to be released into public/international databases must be similarly reviewed. Such formal release is not required for abstracts of papers submitted to evaluation committees for possible acceptance of a subsequent paper and presentations which are not published in technical journals, academic or professional publications, and conference or symposia proceedings, provided they do not contain patentable information or other sensitive technical data and an information copy is provided to the Buyer or the Buyer's designated representative.

C. PATENT, DATA & COPYRIGHT PROVISIONS

C-1 through C-4 listed below from Part 52 of the Federal Acquisition Regulation (FAR) are incorporated herein by reference, with the same force and effect as if they were set forth herein in full text, and are made a part of this Order. The clause text may be accessed at <http://www.arnet.gov/far/>. The term "Government" or "Contracting Officer" shall retain its literal meaning and is not to be construed as the Buyer. It is intended that the clauses shall apply to Seller in such manner as is necessary to reflect the position of Seller as a subcontractor to Buyer, to ensure Seller's obligations to Buyer and to the United States Government, and to enable Buyer to meet its obligations under its prime contract. Seller agrees to flow down, as required, applicable clauses to its lower-tier subcontractors. Seller further agrees that all notifications and other communications required by these clauses shall be made through the Buyer, unless the Order specifically provides otherwise.

C-1 FAR 52.227-1, "Authorization and Consent (JUL 1995) - Alternate I (APR 1984)"

C-2 FAR 52.227-2, "Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996)"

C-3 FAR 52.227-23, "Rights to Proposal Data (Technical) (JUN 1987)"

C-4 Patent Rights (Small Business Firms and Nonprofit Organizations)

(a) Definitions

Invention means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant that is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

Nonprofit organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26

U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

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.

Small business firm means a small business concern as defined at section 2 of Public Law 85-536 (16 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3 through 121.8 and 13 CFR 121.3 through 121.12, respectively, will be used.

Subject invention means any invention of the Recipient conceived or first actually reduced to practice in the performance of work under this award, 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) must also occur during the period of award performance.

(b) Allocation of Principal Rights

The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this Patent Rights clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. the subject invention throughout the world.

(c) Invention Disclosure, Election of (Title) and Filing of Patent Applications by Recipient

(1) The Recipient will disclose each subject invention to DOE within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the award under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Recipient will promptly notify DOE of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.

(2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying DOE within two years of disclosure to DOE. However, in any case where publication, on sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the U.S., the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Recipient will file its initial patent application on an invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the U.S. after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application, or six months from the date when permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to DOE, election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of DOE, be granted.

(d) Conditions When the Government May Obtain (Title)

The Recipient will convey to DOE, upon written request, title to any subject invention:

(1) If the Recipient fails to disclose or elect the subject invention within the times specified in paragraph (c) of this patent rights clause, or elects not to retain title; provided that DOE may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times;

(2) In those countries in which the Recipient fails to file patent applications within the times specified in paragraph (c) of this Patent Rights clause; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph (c) of this Patent Rights clause, but prior to its receipt of the written request of DOE, the Recipient shall continue to retain title in that country; or

(3) In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Recipient and Protection of the Recipient Right To File

(1) The Recipient will retain a non-exclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the subject invention within the times specified in paragraph (c) of this Patent Rights clause. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope of the extent the Recipient was legally obligated to do so at the time the award was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by DOE 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 at 37 CFR part 404 and the agency's licensing regulation, if any. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at discretion of the funding Federal agency to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and the agency's licensing regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) Recipient Action To Protect Government's Interest

(1) The Recipient agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions for which the Recipient retains title; and

(ii) Convey title to DOE when requested under paragraph (d) of this Patent Rights clause, and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under this award in order that the Recipient can comply with the

disclosure provisions of paragraph (c) of this Patent Rights clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information requested by paragraph (c)(1) of this Patent Rights clause. The Recipient shall instruct such employees through the 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) The Recipient will notify DOE of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Recipient agrees to include, within the specification of any U.S. patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the award) awarded by (identify DOE). The Government has certain rights in this invention."

(g) Subaward/Contract

(1) The Recipient will include this Patent Rights clause, suitably modified to identify the parties, in all subawards/contracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or nonprofit organization. The subrecipient/contractor will retain all rights provided for the Recipient in this Patent Rights clause, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractors' subject inventions.

(2) The Recipient will include in all other subawards/contracts, regardless of tier, for experimental, developmental or research work, the patent rights clause required by 10 CFR 600.325(c).

(3) In the case of subawards/contracts at any tier, DOE, the Recipient, and the subrecipient/contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient/contractor and DOE with respect to those matters covered by the clause.

(h) Reporting on Utilization of Subject Inventions

The Recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient and such other data and information as DOE may reasonably specify. The Recipient also agrees to provide additional reports in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this Patent Rights clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without the permission of the Recipient.

(i) Preference for United States Industry.

Notwithstanding any other provision of this Patent Rights clause, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the U.S. 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 U.S. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Recipient 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 U.S. or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in-Rights

The Recipient agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with procedures at 37 CFR 401.6 and any supplemental regulations of the Agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances and if the Recipient, 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 Recipient 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 which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensee; or

(4) Such action is necessary because the agreement required by paragraph (i) of this Patent Rights clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the U.S. is in breach of such agreement.

(k) Special Provisions for Awards With Nonprofit Organizations

If the Recipient is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the U.S. may not be assigned without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Recipient;

(2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific or engineering research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give preference to a small business firm if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the Secretary of Commerce may review the Recipient's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures or practices with the Secretary when the Secretary's review discloses that the Recipient could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communications

All communications required by this Patent Rights clause should be sent to:

Robert J. Fisher
Intellectual Property Law Division
U.S. DOE Chicago Operations Office
9800 So. Cass Ave.
Argonne, IL 60439-4899

(m) Electronic Filing

Unless otherwise Specified in the award, the information identified in paragraphs (f)(2) and (f)(3) may be electronically filed.

[End of clause]

C-5 Rights in Data—General

(a) Definitions

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

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

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

Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

Limited rights, as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

Limited rights data, as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

Restricted rights, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

Technical data, as used in this clause, means data (other than computer software) which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer database.

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

(b) Allocations of Rights

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this agreement;

- (ii) Form, fit, and function data delivered under this agreement;
 - (iii) Data delivered under this agreement (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this agreement; and
 - (iv) All other data delivered under this agreement unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.
- (2) The Recipient shall have the right to—
- (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this agreement, unless provided otherwise in paragraph (d) of this clause;
 - (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;
 - (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take over appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
 - (iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright

(1) Data first produced in the performance of this agreement. Unless provided otherwise in paragraph (d) of this clause, the Recipient may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in data first produced in the performance of this agreement. When claim to copyright is made, the Recipient shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgement of Government sponsorship (including agreement number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For such copyrighted data, including computer software, the Recipient grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) Data not first produced in the performance of this agreement. The Recipient shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this agreement any data not first produced in the performance of this agreement and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Recipient identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in this agreement or as otherwise may be provided in a collateral agreement incorporated in or made part of this agreement.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, Publication and Use of Data

(1) The Recipient shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this agreement, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this agreement.

(2) The Recipient agrees that to the extent it receives or is given access to data necessary for the performance of this agreement, which contain restrictive markings, the Recipient shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) Unauthorized Marking of Data

(1) Notwithstanding any other provisions of this agreement concerning inspection or acceptance, if any data delivered under this agreement are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this agreement, the Contracting Officer may at any time either return the data to the Recipient or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Recipient affording the Recipient 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Recipient fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Recipient provides written justification to substantiate the propriety of the markings within the period set in subparagraph (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Recipient shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Recipient a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Recipient files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subparagraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(f) Omitted or Incorrect Markings

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Recipient may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Recipient's expense, and the Contracting Officer may agree to do so if the Recipient:

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also:

(i) Permit correction at the Recipient's expense of incorrect notices if the Recipient identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or

(ii) Correct any incorrect notices.

(g) Protection of Limited Rights Data and Restricted Computer Software

When data other than that listed in subparagraphs (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this agreement and qualify as either limited rights data or restricted computer software, if the Recipient desires to continue protection of such data, the Recipient shall withhold such data and not furnish them to the Government under this agreement. As a condition to this withholding, the Recipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer database for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(h) Subaward/Contract

The Recipient has the responsibility to obtain from its subrecipients/contractors all data and rights therein necessary to fulfill the Recipient's obligations to the Government under this agreement. If a subrecipient/contractor refuses to accept terms affording the Government such rights, the Recipient shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with the subaward/contract award without further authorization.

(i) Additional Data Requirements

In addition to the data specified elsewhere in this agreement to be delivered, the Contracting Officer may, at anytime during agreement performance or within a period of 3 years after acceptance of all items to be delivered under this agreement, order any data first produced or specifically used in the performance of this agreement. This clause is applicable to all data ordered under this subparagraph. Nothing contained in this subparagraph shall require the Recipient to deliver any data the withholding of which is authorized by this clause, or data that are specifically identified in this agreement as not subject to this clause. When data are to be delivered under this subparagraph, the Recipient will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(j) The Recipient agrees, except as may be otherwise specified in this agreement for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this agreement, inspect at the Recipient's facility any data withheld pursuant to paragraph (g) of this clause, for purposes of verifying the Recipient's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Recipient whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

As prescribed in 600.325(d)(1), the following Alternate I and/or II may be inserted in the clause in the award instrument.

Alternate I:

(g)(2) Notwithstanding subparagraph (g)(1) of this clause, the agreement may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Recipient may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, in accordance with such Notice:

LIMITED RIGHTS NOTICE

(a) These data are submitted with limited rights under Government agreement No. ____ (and subaward/contract No. ____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Recipient, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

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

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

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

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

(5) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate II:

(g)(3)(i) Notwithstanding subparagraph (g)(1) of this clause, the agreement may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Recipient may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the Notice.

RESTRICTED RIGHTS NOTICE

(a) This computer software is submitted with restricted rights under Government Agreement No. ____ (and subaward/contract ____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the agreement.

(b) This computer software may be—

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

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

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

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

(5) Disclosed to and reproduced for use by support service Recipients in accordance with subparagraph (b)(1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copied for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated, in, or incorporated in, the agreement.

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

(End of notice)

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

RESTRICTED RIGHTS NOTICE

Use, reproduction, or disclosure is subject to restrictions set forth in agreement No. ____ (and subaward/contract ____, If appropriate) with ____ (name of Recipient and subrecipient/contractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Recipient includes the following statement with such copyright notice: "Unpublished—rights reserved under the Copyright Laws of the United States."

(End of clause)

Alternate III

(c) Copyright. (1) Data First Produced in the Performance of the Contract. Except as otherwise specifically provided in this contract, the Contractor may establish claim to copyright subsisting in any data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgement of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting on its behalf, a paid up, nonexclusive, irrevocable worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

Alternate IV

j) The Contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Contractor's facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Contractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Contractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

D. PROPERTY REPORTING REQUIREMENTS

If Seller acquires property under this Order whether fabricated, furnished or purchased, then a listing of such property shall be submitted to Buyer within 30 days after August 31 of each year and within 15 days after the Order ends. This report must separately identify items that were fabricated, furnished or purchased under this Order.

E. 10 CFR PART 600, SUBPART B - Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations

Source: 59 FR 53266, Oct. 21, 1994, unless otherwise noted.

General

600.100 Purpose.

This subpart implements OMB Circular A-110 and establishes uniform administrative requirements for grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. It also establishes rules governing subawards to institutions of higher education, hospitals, and non-profit organizations (including grants and cooperative agreements administered by State, local and Indian Tribal governments).

[59 FR 53266, Oct. 21, 1994, as amended at 68 FR 50650, Aug. 21, 2003]

600.101 Definitions.

Accrued expenditures means the charges incurred by the recipient during a given period requiring the provision of funds for:

- (1) Goods and other tangible property received;
- (2) Services performed by employees, contractors, subrecipients, and other payees; and,
- (3) Other amounts becoming owed under programs for which no current services or performance is required.

Accrued income means the sum of:

- (1) Earnings during a given period from services performed by the recipient, and goods and other tangible property delivered to purchasers, and
- (2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

Acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Award means Order, this contractual instrument, including changes, of which these terms and conditions are a part thereof.

Awardee means Seller, the legal entity that contracts with the Buyer under this Order.

Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout means the process by which DOE determines that all applicable administrative actions and all required work of the award have been completed by the recipient and DOE.

Contract means Order, this contractual instrument, including changes, of which these terms and conditions are a part thereof.

Contractor means Seller, the legal entity that contracts with the Buyer under this Order.

Cost sharing or matching means that portion of project or program costs not borne by DOE.

Date of completion means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which DOE sponsorship ends.

Disallowed costs means those charges to an award that the DOE determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

Equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5000 or more per unit.

Excess property means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

Exempt property means tangible personal property acquired in whole or in part with Federal funds, where the Federal-awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

Funds authorized means the total amount of funds obligated by the Buyer for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions

Federal share of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

Financial Assistance Award means Order, this contractual instrument, including changes, of which these terms and conditions are a part thereof.

Funding period or budget period means the period of time when DOE funding is available for obligation by the recipient.

Intangible property and debt instruments means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

Obligations means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

Outlays or expenditures means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

Prior approval means written approval by a contracting officer evidencing prior consent.

Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in §§600.124 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of DOE funds is not program income. Except as otherwise provided in this subpart, program regulations, or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

Project costs means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Project period means the period established in the award document during which DOE sponsorship begins and ends.

Property means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

Recipient means Seller, the legal entity that contracts with the Buyer under this Order.

Research and development means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

Small award means an Order not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently \$25,000).

Subaward means Sub-tier Order made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations).

Supplies means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (“subject inventions”), as defined in 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.”

Suspension means an action by DOE that temporarily withdraws DOE sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the DOE. Suspension of an award is a separate action from suspension under DOE regulations implementing E.O.'s 12549 and 12689, “Debarment and Suspension” (see 10 CFR part 1036).

Termination means the cancellation of DOE sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

Third party in-kind contributions mean the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Unliquidated obligations, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by DOE that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Unrecovered indirect cost means the difference between the amount awarded and the amount that could have been awarded under the recipient's approved negotiated indirect cost rate.

Working capital advance means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

600.102 Effect on other issuances.

For awards subject to this subpart, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this subpart shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in §600.4.

600.103 Deviations.

The deviation provisions of §600.4 apply to this subpart.

600.104 Subawards.

Unless sections of this subpart specifically exclude subrecipients from coverage, all DOE recipients, including State, local and Indian tribal governments, shall apply the provisions of this subpart to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals, or other non-profit organizations organizations. Thus, this subpart is applicable to those types of organizations regardless of the type of recipient receiving the primary award. State and local government subrecipients are subject to the provisions of 10 CFR Part 600, Subpart C, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." For-profit subrecipients are subject to the provisions of 10 CFR Part 600, subpart D, Administrative Requirements for Grants and Cooperative Agreements with For-Profit Organizations.

[59 FR 53266, Oct. 21, 1994, as amended at 68 FR 50650, Aug. 21, 2003]

Post-Award Requirements

Financial and Program Management

600.120 Purpose of financial and program management.

Sections 600.121 through 600.128 prescribe standards for financial management systems, methods for making payments and rules for satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

600.121 Standards for financial management systems. (Modified)

(a) Recipients shall relate financial data to performance data and develop unit cost information whenever practical. For awards that support research, it should be noted that it is generally not appropriate to develop unit cost information.

(b) Except for the provisions of 600.121(f), Recipients' financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in §600.152. If a DOE award requires reporting on an accrual basis from a Recipient that maintains its records on other than an accrual basis, the Recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for their reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data. As discussed in paragraph (a) of this section, unit cost data is generally not appropriate for awards that support research.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the Recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the Recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern,

payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the Recipient, the Buyer, at his or her discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the Recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Buyer may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described in §§600.121 (c) and (d), the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

(f) Individuals whose financial management systems do not meet the minimum standards of §600.121 (b) shall maintain a separate bank account for deposit of award or subaward funds. Disbursements by the Recipient or Subrecipient from this account shall be supported by source documentation such as canceled checks, paid bills, receipts, payrolls, etc.

600.124 Program income.

(a) The standards set forth in this section shall be used to account for program income related to projects financed in whole or in part with DOE funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the Recipient and, in accordance with program regulations or the terms and conditions of the award, shall be used in one or more of the following ways.

(1) Added to funds committed to the project and used to further eligible project objectives.

(2) Used to finance the non-DOE share of the project.

(3) Deducted from the total project allowable cost in determining the net allowable costs on which the share of costs is based.

(c) When the Buyer, as instructed by DOE, authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the program regulations or the terms and conditions of the award do not specify how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section shall apply automatically unless the award indicates another alternative in the terms and conditions, the Recipient is subject to special award conditions, as indicated in §600.114, or the Recipient is a commercial organization.

(e) Unless program regulations or the terms and conditions of the award provide otherwise, Recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) Unless program regulations or the terms and conditions of the award provide otherwise, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§600.130 through 600.137).

(h) Unless program regulations or the terms and condition of the award provide otherwise, Recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark

Amendments (35 U.S.C. Chapter 18) apply to inventions made under an experimental, developmental, or research award.

600.125 Revision of budget and program plans. (Modified)

(a) The budget plan is the financial expression of the project or program as approved during the award process. It includes the sum of the Federal and non-Federal share when there are cost sharing requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, Recipients shall request prior approvals from the Buyer for one or more of the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional funding.

(5) If required by program regulations, the transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa.

(6) The inclusion, unless waived by program regulations or the terms and conditions of award, of costs that require prior approval in accordance with OMB Circular A-21, "Cost Principles for Institutions of Higher Education," OMB Circular A-122, "Cost Principles for Non-Profit Organizations," or 45 CFR part 74 Appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved in accordance with §600.4.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, program regulations may waive cost-related and administrative prior written approvals required by this subpart and its Appendices. Such waivers may include authorizing Recipients to do any one or more of the following.

(1) Incur pre-award costs 90 calendar days prior to award without prior approval or more than 90 calendar days with the prior approval of the Buyer. All pre-award costs are incurred at the Recipient's risk (i.e., the Buyer/DOE is under no obligation to reimburse such costs if for any reason the Recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the final budget period of the project of up to 12 months unless one or more of the following conditions apply.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(iv) The extension is being exercised merely for the purpose of using unobligated balances. For one-time extensions, the Recipient must notify the Buyer in writing with the supporting reasons and revised expiration date at least 15 days before the expiration date specified in the award.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the terms and conditions of award provide otherwise, the prior approval requirements described in paragraph (e) of this section are

automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in §600.125(e)(2) applies.

(5) For continuation awards within a multiple year project in support of research, prior to receipt of continuation funding, preaward expenditures by Recipients are not subject to the limitation or approval requirements of §600.125(e)(1). Nevertheless, incurrence by the Recipient does not impose any obligation on the Buyer or DOE if a continuation award is not subsequently made, or if an award is made for a lesser amount than the Recipient expected.

(f) Program regulations may restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which DOE's share of the project exceeds \$100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by DOE. However, no program regulation shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.

(h) For construction awards, Recipients shall request prior written approval promptly from the Contracting Officer for budget revisions whenever paragraph (h) (1), (2) or (3) of this section apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in §600.127.

(i) Except in accordance with the deviation procedures in 600.4 or as may be provided for in program regulations, no other prior approval requirements for specific items will be imposed by the Buyer .

(j) When the Buyer makes an award that provides support for both construction and nonconstruction work, the Buyer may require the Recipient to request prior approval from the Buyer before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, Recipients shall notify the Buyer in writing promptly whenever the amount of funds is expected to exceed the needs of the Recipient for the project period by more than \$5000 or five percent of the award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) Requests for budget revisions may be made by letter.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, the Buyer shall review the request and notify the Recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 45 calendar days, the Buyer shall inform the Recipient in writing of the date when the Recipient may expect the decision.

(n) Buyer approval or disapproval of a request for a budget or project revision shall be in writing and signed by the Buyer's Authorized Purchasing Representative.

(o) A request by a Subrecipient for prior approval shall be addressed in writing to the Recipient. The Recipient shall promptly review such request and shall approve or disapprove the request in writing within 30 days from the date of the Recipient's request for the revision. A Recipient shall not approve any budget or project revision that is inconsistent with the purpose or terms and conditions of the award. If the revision requested by the Subrecipient would result in a change to the Recipient's approved budget or approved project that requires the Buyer's prior approval, the Recipient shall obtain the Buyer's approval before approving such revision.

600.126 Non-Federal audits.

(a) Recipients and Subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations.”

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations.”

(c) For-profit organizations that are Subrecipients are subject to the audit requirements specified in 10 CFR 600.316.

[59 FR 53266, Oct. 21, 1994, as amended at 62 FR 45939, 45940, Aug. 29, 1997; 68 FR 50650, Aug. 21, 2003]

600.127 Allowable costs. (Modified)

(a) General. For each kind of Recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, “Cost Principles for State and Local Governments.” The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, “Cost Principles for Non-Profit Organizations.” The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, “Cost Principles for Educational Institutions.” The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, “Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.” The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

(b) Indirect costs. Unless restricted by Federal statute or program rule, Buyer shall provide for the reimbursement of appropriate indirect costs.

(1) DOE shall include an amount for indirect costs in an award only if the applicant requests reimbursement of such costs and—

(i) Submits evidence that a cognizant Federal agency has been assigned to establish indirect cost rates for the applicant and indicates or provides evidence that—

(A) A current agreement containing an applicable approved indirect cost rate(s) covering all or part of the budget period for which DOE may provide funding has been established; or

(B) An indirect cost proposal has been submitted to the cognizant agency in order to establish an applicable approved indirect cost rate(s) covering all or part of the budget period for which DOE may provide funding; or

(C) An indirect cost proposal covering all or part of the budget period and applicable to the activities for which DOE may provide funding will be submitted to the cognizant agency for approval no later than three months after the beginning date of the initial budget period of the DOE award or, for subsequent budget periods, in accordance with any schedule established by the cognizant agency; or

(ii) If not assigned to a cognizant agency, the applicant includes, in the application, data that is current, complete, accurate, and sufficient to allow the Contracting Officer to determine a rate(s) for indirect costs. If the total approved budget will not exceed \$100,000 or if the amount requested for indirect costs does not exceed \$5,000, DOE may waive the requirement for negotiation of a rate and, in lieu thereof, provide a reasonable allowance for such costs.

(2) Indirect cost proposals shall be prepared and submitted in accordance with the applicable Federal cost principles and instructions from the cognizant agency or from DOE, as appropriate.

(3) If a subaward under an award or subaward provides for the payment of indirect costs, the Recipient or Subrecipient shall be responsible for negotiating appropriate indirect costs, using the cost principles applicable to the Subrecipient or Contractor, unless the Subrecipient or Contractor has negotiated an applicable rate directly with DOE or another Federal department or agency. DOE may review and audit the procedures a Recipient or Subrecipient uses in conducting indirect cost negotiations.

(c) Fee or profit. No increment above cost may be paid to a Recipient or Subrecipient under a DOE award or subaward. A fee or profit may be paid to a contractor providing goods or services under a contract with a Recipient or Subrecipient.

[59 FR 53266, Oct. 21, 1994, as amended at 68 FR 50650, Aug. 21, 2003]

600.128 Period of availability of funds. (Modified)

Where a funding period is specified, a recipient may charge to the award only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Buyer.

Property Standards

600.130 Purpose of property standards.

Sections 600.131 through 600.137 set forth uniform standards governing management and disposition of property furnished by the Federal Government or whose cost was charged to a project supported by a Federal award. Recipients shall observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute or program regulations. The Recipient may use its own property management standards and procedures provided it observes the provisions of §§600.131 through 600.137.

600.131 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with DOE funds as provided to property owned by the Recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

600.132 Real property.

Unless otherwise provided by statute or program regulations, the requirements concerning the use and disposition of real property acquired in whole or in part under awards are as follows.

(a) Title to real property shall vest in the DOE subject to the condition that the Recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of DOE.

(b) The Recipient shall obtain written approval by DOE for the use of real property in other federally-sponsored projects when the Recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects or programs that have purposes consistent with those authorized for support by DOE.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the Recipient shall request disposition instructions from DOE. DOE will give one or more of the following disposition instructions.

(1) The Recipient may be permitted to retain title without further obligation to Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The Recipient may be directed to sell the property under guidelines provided by DOE and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the Recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The Recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the Recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

600.133 Federally-owned and exempt property. (Modified)

(a) Federally-owned property.

(1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to DOE. Upon completion of the award or when the property is no longer needed, the Recipient shall report the property to DOE for direction regarding further Federal agency utilization.

(2) If it is determined DOE has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless DOE has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (i)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, "Improving Mathematics and Science Education in Support of the National Education Goals.") Appropriate instructions shall be issued to the Recipient by DOE.

(b) Exempt property. When statutory authority exists, DOE may vest title to property acquired with Federal funds in the Recipient without further obligation to the Federal Government and under conditions DOE considers appropriate. For example, under 31 U.S.C. 6306, DOE may so vest title to tangible personal property under a grant or cooperative agreement for basic or applied research in a nonprofit institution of higher education or in a nonprofit organization whose primary purpose is conducting scientific research. Such property is "exempt property." Program regulations or the terms and conditions of award may establish provisions for vesting title to exempt property. Should such conditions not be established and the Recipient has no need for the equipment, the Recipient shall request disposition instructions from DOE. If DOE does not issue disposition instructions within 150 calendar days of receipt of the request, title to the property shall vest in the Recipient without further obligation to the Federal Government. If, at the end of the project, DOE fails to issue disposition instructions within 150 calendar days of the receipt of a final inventory, title to the property shall vest in the Recipient without further obligation to the Federal Government.

600.134 Equipment.

(a) Title to equipment acquired by a Recipient with Federal funds shall vest in the Recipient, subject to conditions of this section.

(b) The Recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The Recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of DOE. When no longer needed for the original project or program, the Recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by DOE, then

(2) Activities sponsored by other Federal agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the Recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by DOE that financed the equipment; second preference shall be given to projects or

programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if directed by the Federal Government and authorized by DOE. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the Recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of DOE.

(f) The Recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the Recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a Recipient compensates DOE for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records annually. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The Recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the Recipient shall promptly notify DOE.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the Recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the Recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. Equipment with a current per-unit fair market value of less than \$5000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency. For equipment with a current per unit fair market value of \$5000 or more, the Recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the Recipient has no need for the equipment, the Recipient shall request disposition instructions from DOE. DOE shall determine whether the equipment can be used to meet DOE's requirements. If no requirement exists within DOE, the availability of the equipment shall be reported to the General Services Administration by DOE to determine whether a requirement for the equipment exists in other Federal agencies. DOE will issue instructions to the Recipient no later than 150 calendar days after the Recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 150 calendar days after the Recipient's request, the Recipient shall sell the equipment and reimburse DOE an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of

the original project or program. However, the Recipient shall be permitted to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the Recipient is instructed to ship the equipment elsewhere, the Recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the Recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Recipient is instructed to otherwise dispose of the equipment, the Recipient shall be reimbursed by DOE for such costs incurred in its disposition.

(h) DOE reserves the right, at the end of a project, to transfer the title to the Federal Government or to a third party named by DOE when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(1) The equipment shall be appropriately identified in the award or otherwise made known to the Recipient in writing.

(2) DOE shall issue disposition instructions within 150 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with award funds and federally-owned equipment. If DOE fails to issue disposition instructions within the 150 calendar day period, the provisions of §600.134(g)(1) apply.

(3) When DOE exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

600.135 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the Recipient upon acquisition. If there is a residual inventory of unused supplies exceeding \$5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the Recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The Recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

600.137 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the Recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Recipients shall record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Procurement Standards

600.140 Purpose of procurement standards.

Sections 600.141 through 600.148 set forth standards for use by Recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement

standards or requirements shall be imposed by DOE upon Recipients, unless specifically required by Federal statute or executive order or in accordance with the deviation procedures of §600.4.

600.141 Recipient responsibilities. (Modified)

The standards contained in this section do not relieve the Recipient of the contractual responsibilities arising under its contract(s). The Recipient is the responsible authority, without recourse to the Buyer or the DOE regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

600.142 Codes of conduct.

The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the Recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, Recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Recipient.

600.143 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The Recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the Recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the Recipient. Any and all bids or offers may be rejected when it is in the Recipient's interest to do so.

600.144 Procurement procedures. (Modified)

(a) All Recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that paragraphs (a)(1), (2) and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement.

(3) Solicitations for goods and services provide for all of the following.

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features that unduly restrict competition.

- (ii) Requirements that the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.
- (iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
- (iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.
- (v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
- (vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.
- (b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of DOE awards shall take all of the following steps to further this goal.
 - (1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
 - (2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
 - (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
 - (4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
 - (5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.
- (c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the Recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.
- (d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by DOE's implementation in 10 CFR Part 1036, of E.O.'s 12549 and 12689, "Debarment and Suspension."
- (e) Recipients shall, on request, make available for DOE and Buyer, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.
 - (1) A Recipient's procurement procedures or operation fails to comply with the procurement standards in this subpart.
 - (2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently \$25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.
 - (3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.
 - (4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.
 - (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.
- (f) By agreement of the Recipient or Subrecipient and the Contractor, if consistent with the Recipient's or Subrecipient's usual business practices and applicable state and local law, any

contract to which this section applies may provide for the payment of interest penalties on amounts overdue under such contract except that—

(1) In no case shall any obligation to pay such interest penalties be construed to be an obligation of the Federal government, and

(2) Any payment of such interest penalties may not be made from DOE funds nor be counted toward meeting a cost sharing requirement of a DOE award.

600.145 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

600.146 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection,

(b) Justification for lack of competition when competitive bids or offers are not obtained, and

(c) Basis for award cost or price.

600.147 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

600.148 Contract provisions. (Modified)

The Recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the Recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the Contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the Recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, the Buyer may accept the bonding policy and requirements of the Recipient, provided the Buyer has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the Contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.

(3) A payment bond on the part of the Contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, “Surety Companies Doing Business with the United States.”

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the Recipient, DOE, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by Recipients and their contractors shall contain the procurement provisions of Appendix A (see Section F) to this subpart, as applicable.

600.149 Resource Conservation and Recovery Act (RCRA).

Recipients’ procurements shall comply with applicable requirements of RCRA, as described at §600.116 of this subpart.

Reports and Records

600.150 Purpose of reports and records.

Sections 600.151 through 600.153 set forth the procedures for monitoring and reporting on the Recipient’s financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

600.153 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to Recipients. DOE shall not impose any other record retention or access requirements upon Recipients, unless such requirements are established in program regulations.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by DOE. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by DOE, the 3-year retention requirement is not applicable to the Recipient.

(4) Indirect cost rate proposals, cost allocations plans, and related records, for which retention requirements are specified in §600.153(g).

- (c) Copies of original records may be substituted for the original records if authorized by DOE.
- (d) DOE shall request transfer of certain records to its custody from Recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate record keeping, DOE may make arrangements for Recipients to retain any records that are continuously needed for joint use.
- (e) DOE, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of Recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a Recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.
- (f) Unless required by statute, DOE shall place no restrictions on Recipients that limit public access to the records of Recipients that are pertinent to an award, except when DOE can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to DOE.
- (g) Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
- (1) If submitted for negotiation. If the Recipient submits to the Federal agency responsible for negotiating the Recipient's indirect cost rate or the Subrecipient submits to the Recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.
- (2) If not submitted for negotiation. If the Recipient is not required to submit to the cognizant Federal agency or the Subrecipient is not required to submit to the Recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.
- (h) If, by the terms and conditions of the award, the Recipient or Subrecipient—
- (1) Is accountable for program income earned or received after the end of the project period or after the termination of an award or subaward, or
- (2) If program income earned during the project period is required to be applied to costs incurred after the end of the project period or after termination of an award or subaward, the record retention period shall start on the last day of the recipient's or subrecipient's fiscal year in which such income was earned or received or such costs were incurred. All other program income records shall be retained in accordance with §600.153(b).

Termination and Enforcement

600.160 Purpose of termination and enforcement.

Sections 600.161 and 600.162 set forth uniform suspension, termination and enforcement procedures.

600.161 Termination. (Modified)

- (a) Awards may be terminated in whole or in part only if paragraph (a) (1), (2) or (3) of this section apply.
- (1) By the Buyer, if a Recipient materially fails to comply with the terms and conditions of an award.
- (2) By the Buyer with the consent of the Recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the Recipient upon sending to the Buyer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Buyer determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the award was made, it may terminate the award in its entirety under either paragraph (a) (1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the Recipient referred to in §600.171(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the Recipient after termination, as appropriate.

600.162 Enforcement. (Modified)

(a) Remedies for noncompliance. If a Recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Buyer may, in addition to imposing any of the special conditions outlined in §600.114, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the Recipient or more severe enforcement action by the Buyer .

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) Hearings and appeals. In taking an enforcement action, the Buyer shall provide the Recipient an opportunity for hearing, appeal, or other administrative proceeding to which the Recipient is entitled under any statute or regulation applicable to the action involved.

(c) Effects of suspension and termination. Costs of a Recipient resulting from obligations incurred by the Recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other Recipient costs during suspension or after termination that are necessary and not reasonably avoidable are allowable if paragraph (c) (1) and (2) of this section apply.

(1) The costs result from obligations which were properly incurred by the Recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a Recipient from being subject to debarment and suspension under 10 CFR part 1036.

After-the-Award Requirements

600.170 Purpose.

Sections 600.171 through 600.173 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

600.171 Closeout procedures. (Modified)

(a) Recipients shall submit, within 45 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Buyer may approve extensions when requested by the Recipient.

(b) Unless the Buyer authorizes an extension, a Recipient shall liquidate all obligations incurred under the award not later than 45 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Buyer shall make prompt payments to a Recipient for allowable reimbursable costs under the award being closed out.

(d) The Recipient shall promptly refund any balances of unobligated cash that the Buyer has advanced or paid and that is not authorized to be retained by the Recipient for use in other projects. OMB Circular A-129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Buyer shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The Recipient shall account for any real and personal property acquired with Federal funds or received from the Buyer in accordance with §§600.131 through 600.137.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Buyer shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

600.172 Subsequent adjustments and continuing responsibilities. (Modified)

(a) The closeout of an award does not affect any of the following.

(1) The right of the Buyer to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the Recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in §600.126.

(4) Property management requirements in §§600.131 through 600.137.

(5) Records retention as required in §600.153.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Buyer and the Recipient, provided the responsibilities of the Recipient referred to in paragraph 600.173(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the Recipient, as appropriate.

600.173 Collection of amounts due. (Modified)

(a) Any funds paid to a Recipient in excess of the amount to which the Recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Buyer. If not paid within a reasonable period after the demand for payment, the Buyer may reduce the debt by paragraph (a) (1), (2) or (3) of this section.

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the Recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Buyer shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, "Federal Claims Collection Standards."

F. Appendix A to Subpart B of Part 600—Contract Provisions

F-1. Equal Employment Opportunity

All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

F-2. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c) (Modified)

All contracts and subgrants in excess of \$2000 for construction or repair awarded by Recipients and Subrecipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States”). The Act provides that each recipient or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The Recipient shall report all suspected or reported violations to the Buyer .

F-3. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) (Modified)

When required by Federal program legislation, all construction contracts awarded by the Recipient and Subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The Recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Buyer.

F-4. Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)

Where applicable, all contracts awarded by the Recipient in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work-week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

F-5. Rights to Inventions Made Under a Contract or Agreement

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

F-6. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended

Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the Recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control

Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

F-7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Recipient.

F-8. Debarment and Suspension (E.O.s 12549 and 12689)

Contract awards that exceed the small purchase threshold and certain other contract awards shall not be made to parties listed on the nonprocurement portion of the General Services Administration's List of parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principals.

- C-4 Patent Rights (Small Business Firms and Nonprofit Organizations)
- C-5 Rights in Data – General

D. PROPERTY REPORTING REQUIREMENTS

E. 10 CFR 600, SUBPART B, UNIFORM ADMINISTRATIVE REQUIREMENTS

Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations

F. APPENDIX A TO 10 CFR PART 600 SUBPART B – CONTRACT PROVISIONS

- F-1 Equal Employment Opportunity
- F-2 Copeland “Anti-Kickback” Act
- F-3 Davis-Bacon Act, as amended
- F-4 Contract Work Hours and Safety Standards Act
- F-5 Rights to Inventions Made Under a Contract or Agreement
- F-6 Clean Air Act
- F-7 Byrd Anti-Lobbying Amendment
- F-8 Debarment and Suspension