

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

Clause Number: 5062
Effective: 11/20/2002
Page: 1 of 8

DE-ACO3-99SF21530
DOE REMEDIATION

- (a) The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. Unless provided for otherwise elsewhere in this contract, only subparagraphs (17), (18), (19) and (31) of this paragraph (a) shall apply to any portion of this contract that is for commercial items or commercial components, as those terms are defined at FAR 52.202-1. In all of the following clauses, "Contractor" and "Offeror" shall mean Seller.
- (1) 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995). This clause applies only if this contract exceeds \$100,000.
 - (2) 52.203-7 Anti-Kickback Procedures (JUL 1995) [excluding subparagraph (c)(1)]. This clause applies only if this contract exceeds \$100,000. Buyer may withhold from sums owed Seller the amount of any kickback paid by Seller or its subcontractors at any tier if (a) the Contracting Officer so directs, or (b) the Contracting Officer has offset the amount of such kickback against money owed Buyer under the prime contract.
 - (3) 52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997). This clause applies to this contract if Seller, its employees, officers, directors or agents participated personally and substantially in any part of the preparation of a proposal for this contract. Seller shall indemnify Buyer for any and all losses suffered by Buyer due to violations of the Act (as set forth in this clause) by Seller or its subcontractors at any tier.
 - (4) 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997). This clause applies only if this contract exceeds \$100,000. If the Government reduces Buyer's price or fee for violations of the Act by Seller or its subcontractors at any tier, Buyer may withhold or recover from Seller the amount of the reduction.
 - (5) 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (APR 1991). This clause applies only if this contract exceeds \$100,000.
 - (6) 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JUN 1997). This clause applies only if this contract exceeds \$100,000. Paragraph (c) (4) is modified to read as follows: "(c) (4) Seller will promptly submit any disclosure required (with written notice to Buyer) directly to the PCO for the prime contract. Buyer will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor."

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

Clause Number: 5062
Effective: 11/20/2002
Page: 2 of 8

- (7) 52.204-2 Security Requirements (AUG 1996) (excluding any reference to the Changes clause of this contract). This clause applies only if access to classified information is required.
- (8) 52.211-15 Defense Priority and Allocation Requirements (SEP 1990)
- (9) 52.215-1 Examination of Records by Comptroller General (FEB 1993). This clause applies only if this contract exceeds \$100,000.
- (10) 52.215-2 Audit -- Negotiation (FEB 1993). This clause applies only if this contract exceeds \$100,000.
- (11) 52.215-10 Price Reduction For Defective Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$550,000. In subparagraph (3) of paragraph (a), insert "of this contract" after "price or cost." In Paragraph (c), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Paragraphs (c)(1), (c)(1)(ii), and (c)(2)(i), "Contracting Officer" shall mean "Contracting Officer or Buyer." In Subparagraph (c)(2)(i)(A), delete "to the Contracting Officer." In Subparagraph (c)(2)(ii)(B), "Government" shall mean "Government or Buyer." In Paragraph (d), "United States" shall mean "United States or Buyer."
- (12) 52.215-11 Price Reduction For Defective Cost Or Pricing Data-Modifications (OCT 1997). This clause applies only if this contract exceeds \$550,000. "Contracting Officer" shall mean "Contracting Officer or Buyer." In Subparagraph (d)(2)(i)(A), delete "to the Contracting Officer." In Subparagraph (d)(2)(ii)(B), "Government" means "Government" or "Buyer." In Paragraph (e), "United States" shall mean "United States or Buyer."
- (13) 52.215-12 Subcontractor Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$550,000. The certificate required by paragraph (b) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "The Boeing Company or any of its wholly owned subsidiaries."
- (14) 52.215-13 Subcontractor Cost or Pricing Data – Modifications (OCT 1997). This clause applies only if this contract exceeds \$550,000. The certificate required by paragraph (b) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "The Boeing Company or any of its wholly owned subsidiaries."
- (15) 52.215-27 Termination of Defined Benefit Pension Plans (MAR 1996). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR part 31. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean Buyer.

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

Clause Number: 5062
Effective: 11/20/2002
Page: 3 of 8

- (16) 52.219-8 Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns (OCT 1995)
- (17) 52.219-9 Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan (OCT 1995). This clause applies only if this contract exceeds \$500,000 and Seller is not a small business concern. In paragraph (c), "Contracting Officer" shall mean Buyer.
- (18) 52.222-26 Equal Opportunity (FEB 1999) [subparagraphs (b)(1) through (11)]
- (19) 52.222-35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998). This clause applies only if this contract is for \$10,000 or more.
- (20) 52.222-36 Affirmative Action for Workers With Disabilities (JUN 1998). This clause applies only if this contract exceeds \$10,000.
- (21) 52.222-37 Employment Reports on Special Disabled and Veterans of the Vietnam Era (JAN 1988). This clause applies only if this contract is for \$10,000 or more.
- (22) 52.223-2 Clean Air and Water (APR 1984). This clause applies only if this contract exceeds \$100,000.
- (23) 52.225-3 Buy American Act – Supplies (JAN 1994)
- (24) 52.227-1 Authorization and Consent (JUL 1995), Alternate I (APR 1984)
- (25) 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996). This clause applies only if this contract exceeds \$100,000. A copy of each notice sent to the Government will be sent to Buyer.
- (26) 52.227-3 Patent Indemnity (Apr 84)
- (27) 52.227-14 Rights in Data -- General (JUN 1987) and Alternate II (modified) June 1987) and Alternative V (JUN 1987) and paragraphs (a) and (d)(3) as prescribed by 48 CFR 927.409(a)(1). Paragraph(g)(2) is inserted in the clause. This clause applies only if data will be produced, furnished, or acquired under this contract.
- (28) 52.227-16 Additional Data Requirements (JUN 1987). This clause applies only if this contract involves experimental, developmental, research, or demonstration work.
- (29) 52.227-23 Rights To Proposal Data (Technical) (June1987)

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

Clause Number: 5062
Effective: 11/20/2002
Page: 4 of 8

- (30) 52.230-6 Administration of Cost Accounting Standards (APR 1996). This clause applies only if clause 3050 or 3051 is incorporated in this contract. Add “Buyer and the” before “Contracting Officer” in paragraph (f).
- (31) 52.244-6 Subcontracts for Commercial Items and Commercial Components (OCT 1998)

The following contract clauses are incorporated by reference from the Department of Energy Acquisition Regulations and apply to the extent indicated. In all the following clauses, “Contractor” and “Offeror” shall mean Seller.

(31) 952.227-9 Refund of Royalties (Mar 1995)

(32) 952.227-75 Contract Licensing of Limited Rights Data and Restricted Computer Software- (Modified) Alternative II (Apr 1994). With the exception of a small business firm or a nonprofit organization, this clause shall become applicable automatically if the Contractor should assert a proprietary claim in connection with any request for data under the clause, FAR 52.227-14 Rights in Data-General with Alternatives I and V (June 1987), and/or under the clause FAR 52.227-16 Additional Data Requirements (June 1987).

CONFIDENTIALITY OF INFORMATION

(a) To the extent that the work under this contract requires that the Seller be given access to or be furnished with confidential or proprietary business, technical, or financial information or data belonging to other entities which is clearly marked as confidential or proprietary, the Seller shall, after receipt thereof, treat such information in confidence and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized in writing by the Buyer. The obligations of this section, however, shall not apply to:

- (1) Information or data which is in the public domain at the time of receipt by the Seller;
- (2) Information or data which is published or otherwise subsequently becomes part of the public domain through no fault of the Seller;
- (3) Information or data which the Seller can demonstrate was already in its possession at the time of receipt thereof; or
- (4) Information or data which the Seller can demonstrate was received by it from a third party who did not require the Seller to treat it in confidence.

Neither party shall be liable for inadvertent, accidental, or mistaken use or disclosure of such information or data despite the exercise of the same reasonable precautions as the receiving party takes to safeguard its own proprietary information. Any copies of the data made by the receiving party shall reproduce the proprietary markings and any other legends contained thereon. The obligations as set forth in this subparagraph with regard to the protection of confidential or proprietary information shall not extend to such information, which is furnished directly by any third parties.

(b) Seller agrees (1) to enter into an agreement, identical in all material respects to the requirements of paragraph (a) above, with each entity supplying such confidential or proprietary information or data to Seller under this contract and (2) to supply a copy of such agreement to Buyer. Upon request, Seller shall furnish Buyer with reports which

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

Clause Number: 5062
Effective: 11/20/2002
Page: 5 of 8

specify any information or data received as confidential or proprietary and which identify the entity or entities who supplied the Seller with such information or data.

(c) Seller shall obtain the written agreement of each employee permitted access to or furnished with confidential or proprietary business, technical, or financial information or data, whereby the employee agrees that such information or data which Seller is obligated to treat in confidence will not be discussed, divulged or disclosed except to those persons within the Seller's organization directly concerned with the performance of this contract or to Buyer.

Notwithstanding the foregoing Seller-employee agreement, upon request, Seller agrees to obtain from each employee a confidentiality agreement acceptable to Buyer.

(d) Access to and use of information

(i) If Seller, in the performance of this contract, obtains access to information, such as Government plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, Seller agrees that without prior written approval of Buyer and Contracting Officer it shall not: (A) use such information for any private purpose unless the information has been released or otherwise made available to the public; (B) compete for work for the Government based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first; (C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and (D) release such information unless such information has previously been released or otherwise made available to the public by the Government.

(ii) In addition, Seller agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) Seller may use technical data it first produces under this contract for its private purposes consistent with the patent, rights in data, and security provisions of this contract.

(e) This clause shall be included in any subcontract under which there is a requirement or there becomes a requirement that the subcontractor be given access to or be furnished with confidential or proprietary business, technical, or financial information or data.

DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)

(a) Authority. This clause is incorporated into this contract pursuant to the authority contained in subsection 170d. Of the Atomic Energy Act of 1954, as amended (hereinafter called Act).

(b) Definitions. The definitions set out in the Act shall apply to this clause.

(c) Financial protection. Except as hereafter permitted or required in writing by Buyer, Seller will not be required to provide or maintain, and will not provide or maintain at

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

Clause Number: 5062
Effective: 11/20/2002
Page: 6 of 8

Buyer expense, any form of financial protection to cover public liability, as described in subparagraph (d)(2) below. Buyer may, however, at any time require in writing that Seller provide an maintain financial protection of such a type and such amount as Buyer shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to Seller by DOE through Buyer.

(d) Indemnification.

(1) To the extent that Seller and other persons indemnified are not compensated by any financial protection permitted or required under (c), DOE will indemnify Seller and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of Seller and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e. (1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e) Waiver for defenses.

(1) In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, Seller, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.

(2) In the event on an extraordinary nuclear occurrence which:

(i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

(ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or

(iii) Arises out of or results from the possession, operation, or use by the Seller or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the contract activity; or

(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, Seller, on behalf of itself and other persons indemnified, agrees to waive:

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault of persons indemnified, including, but not limited to:

1. Negligence;

2. Contributory negligence;

3. Assumption of risk; or

4. Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

(B) Any issue or defense as to charitable or governmental immunity; and

(C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

Clause Number: 5062
Effective: 11/20/2002
Page: 7 of 8

could have known, of his injury or change and cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(v) The term “extraordinary nuclear occurrence” means an event which DOE has determined to be an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.

(vi) For the purposes of that determination, “offsite” as that term is used in 10 CFR part 840 means away from “the contract location” which phrase means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any Buyer-owned or controlled facility, installation, or site at which the Seller is engaged in the performance of contractual activity under this contract.

(3) The waivers set forth above:

(i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

(ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified

(iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(iv) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

(vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts, or other proof of financial protection; and

(viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. Of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) Notification and litigation of claims. Seller shall give immediate written notice to DOE through Buyer of any known action or claim filed or made against the Seller or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE through Buyer, Seller shall furnish promptly to DOE through Buyer, copies of all pertinent papers received by Seller or filed with respect to such actions or claims. DOE and Buyer shall have the right to, and may collaborate with, Seller and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE through Buyer for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of Seller or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder,

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

Clause Number: 5062
Effective: 11/20/2002
Page: 8 of 8

take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, Seller or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the Seller to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination or existence of Seller, or by the completion, termination or expiration of this contract.

(h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, and Audit and Records – Negotiations, and any provisions that are later added to this contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

(i) Civil penalties. Seller and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.

(j) Criminal penalties. Any individual director, officer, or employee of Seller or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223(c) of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.

(k) Inclusion in subcontracts. Seller shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

(l) Cost Accounting Standards

- (1) The version of FAR 52.230-2, Cost Accounting Standards, incorporated by clause 3050 is the version dated April 1996.
- (2) The version of FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, incorporated by clause 3051 is the version dated April 1996.