

**CUSTOMER CONTRACT REQUIREMENTS
(DEVELOPMENT OF TECHNOLOGIES & CAPABILITIES FOR COAL ENERGY RESOURCES)
CUSTOMER CONTRACT DE-FC26-04NT42237 (DOE-NETL)**

CUSTOMER CONTRACT REQUIREMENTS

If Form GP1 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 29. If Form GP2 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 28. If Form GP3 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 41. If Form GP4 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 31.

(a) Patent Rights

(1) Allocation of Principle Rights. Seller agrees to assign to the Government through the Buyer the entire right, title and interest throughout the world in and to each subject invention, except to the extent rights are retained by Seller under this subsection and subsection (3) below. Seller may request greater rights than the nonexclusive license and the foreign patent rights provided in subsection (3) below on identified inventions in accordance with the DOE patent waiver regulation. Each determination of greater rights under this order shall be subject to subsection (3), unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(2) Minimum Rights Acquired by the Government. With respect to each subject invention to which DOE grants Seller principle or exclusive rights, Seller agrees to grant the Government: a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States; "march-in" rights as set forth in 37 CFR 401.14(a)(J); preference for U. S. industry as set forth in 37 CFR 401.14(a)(I); periodic reports upon request on the utilization or intent of utilization of a subject invention in a manner consistent with 35 U.S.C. 202(c); and such Government rights in any instrument transferring rights in a subject invention.

(3) Minimum Rights to the Seller. Seller is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resultant patent in which the Government obtains title, unless Seller fails to disclose the subject invention within the times specified in subsection (4) below. Seller's license extends to its domestic subsidiaries and affiliates within the corporate structure of which Seller is a part and includes the right to grant sublicenses of the same scope to the extent Seller was legally obligated to do so. The license is transferable only with the approval of DOE except when transferred to the successor of that part of Seller's business to which the invention pertains. Seller may request through Buyer the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the minimum rights acquired by the government elsewhere in this clause.

(4) Invention Identification, Disclosures and Reports. Seller shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Seller personnel responsible for patent matters within 4 months of conception and/or first actual reduction to practice (whichever occurs first) in the performance of work under this order. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or first actual reduction to practice of subject inventions; upon request, Seller shall provide buyer a description of such procedures for evaluation and for determination of their effectiveness. Seller shall disclose each subject invention to Buyer in writing within 2 months after Seller becomes aware that a subject invention has been made, but in any event before any sale, public use or publication of such invention known to Seller. Disclosure shall be in the form of a written report and shall identify the order under which the invention was made and the inventors; it shall be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation, and characteristics of the invention, and whether a manuscript describing the invention has been submitted for publication and whether it has been accepted for publication at the time of disclosure. Such report shall also include any request for greater rights determination as described above. When an invention is disclosed under this provision, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908,

unless Seller contends in writing at the time the invention is disclosed that it was not so made. Seller shall furnish Buyer a final report within 2 months of completing work under this order, listing all subject inventions or containing a statement that there were no such inventions, and listing all subcontracts containing a patent rights clause or containing a statement that there were no such subcontracts. Seller agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Seller personnel responsible for patent matters each subject invention made under this order, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in subject inventions. Seller agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required by this provision.

(5) Examination of Records Relating to Inventions. Buyer, Government, or any of their authorized representatives shall, until 3 years after final payment under this order, have the right to examine any books, records and documents of Seller relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this order to determine whether: any such inventions are subject inventions; Seller has established and maintains the procedures required by this provision; or Seller and its inventors have complied with the procedures. If Buyer learns of an unreported invention which Buyer believes may be a subject invention Seller may be required to disclose invention to DOE for determination of ownership rights.

(6) Atomic Energy. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954 (as amended) shall be asserted with respect to any invention or discovery made or conceived in the course of or under this order. Seller will obtain patent agreements to effect this requirement from all persons who perform any part of the work under this order, except for nontechnical personnel.

(7) Forfeiture of Rights in Unreported Subject Inventions. Seller shall forfeit and assign to the Government all rights in any subject invention which Seller fails to report to Buyer within 4 months after Seller: files or causes to be filed a United States or foreign patent application thereon; or submits the final report required by this provision. Seller shall not forfeit rights in a subject invention if within 2 months of disclosure to Seller's personnel responsible for patent disclosures, Seller: prepares a written decision based on a review of the record that the invention was neither conceived nor first actually reduced to practice under this order and delivers the decision to Buyer; or establishes that the failure to disclose did not result from Seller's fault or negligence.

(8) Seller shall include the substance of this clause in all subcontracts/awards for experimental, developmental, demonstration or research work to be performed in support of this order. Seller shall not obtain rights in subcontractor's subject inventions. In the event of a refusal by a prospective subcontractor to accept this provision, Seller shall promptly notify in writing Buyer of this fact, setting forth subcontractor's reasons for refusal, and shall not proceed with the subcontract without the written authorization of Buyer. Seller shall promptly notify Buyer in writing of the award of any subcontract/order containing a patent rights clause by identifying the subcontractor, the applicable patents clause, the work to be performed, and the dates of award and estimated completion. Upon request of Buyer, Seller shall furnish Buyer a copy of the subcontract/award, and an annual listing of subcontracts/awards that have been made.

(b) Civil Rights Act. This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000-d) relating to nondiscrimination in employment.

(c) Public Release or Dissemination of Information. Seller will submit to Buyer all proposed public releases of information relating to the work performed under this order. In addition, articles for publication or presentation will contain the following statement: "This research was funded by the U. S. Government. The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the official policies, either express or implied, of the U. S. Government."

(d) FAR 52.219-8 Utilization of Small Business Concerns (MAY 2004)

(e) FAR 52.222-35 Affirmative Action for Disabled Veterans & Veterans of the Vietnam Era (APR 1998)

- (f) FAR 52.222-36 Affirmative Action for Workers with Disabilities (JUN 1998)**
- (g) FAR 52.227-1 Authorization & Consent (JUL 1995) – ALT I (APR 1984)**
- (h) FAR 52.227-2 Notice & Assistance Regarding Patent & Copyright Infringement (AUG 1996)**
- (i) FAR 52.227-23 Rights to Proposal Data (Technical) (JUN 1987)**
- (j) The following prime contract special provisions apply to this purchase order:**

(1) NOTIFICATION OF DEBARMENT/SUSPENSION STATUS

Seller shall provide immediate notice to Buyer in the event of being suspended, debarred or declared ineligible by any Department or other Federal Agency, or upon receipt of a notice of proposed debarment from any DoD Agency, during the performance of this Contract.

(2) EXPORT CONTROLLED DATA RESTRICTIONS

(1) For the purpose of this clause,

(A) Foreign person is any person who is not a citizen of the U.S. or lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, foreign organizations, and foreign governments;

(B) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and

(C) Foreign sources are those sources (vendors, subcontractors, and suppliers) owned and controlled by a foreign person.

(2) Seller shall place a clause in subcontracts containing appropriate export control restrictions, set forth in this clause.

(3) Nothing in this clause waives any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.

(4) Equipment and technical data generated or delivered in the performance of this contract are controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128. An export license is required before assigning any foreign source to perform work under this contract or before granting access to foreign persons to any equipment and technical data generated or delivered during performance (see 22 CFR Section 125). Seller shall notify Buyer and obtain the written approval of Buyer prior to assigning or granting access to any work, equipment, or technical data generated or delivered in the performance of this contract to foreign persons or their representatives. This notification shall include the name and country of origin of the foreign person or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign person is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPO)).