

SECTION II
STANDARD TERMS AND CONDITIONS FOR ALL
COST REIMBURSEMENT OR AS ORDERED AGREEMENTS
WITH EDUCATIONAL INSTITUTIONS

The following clauses apply to this contract except to the extent that the contract ceiling price does not meet the dollar threshold as set forth below or they are specifically deleted, or amended in writing in the signature page or section I. All section II clauses included in this contract must be included in all subcontracts of any tier, suitably modified to identify the parties.

The following clauses apply to Requests for Quotation and Contracts at any value.

A10 - DEFINITIONS

As used throughout this contract, the following terms shall have the meanings set forth below:

- (a) SANDIA means Sandia Corporation operates Sandia National Laboratories under Contract No. DE-AC04-AL85000, as amended with the United States Department of Energy.
- (b) SCR - SANDIA CONTRACTING REPRESENTATIVE means the only person authorized to execute and/or administer this contract on behalf of Sandia or the authorized successor to such person.
- (c) GOVERNMENT means the United States of America.
- (d) DOE means the United States Department of Energy, the Secretary of Energy, or any duly authorized representative of the Secretary.
- (e) CONTRACTOR means the Seller or the other party to the contract with Sandia.
- (f) SDR - Sandia Delegated Representative means the person(s) who has been delegated limited authority, in writing by the SCR, as defined in Section I of this contract.
- (g) RECORDS include any and all documentary materials regardless of physical form or characteristics, created or used in the performance of this contract.

A12 - ASSIGNMENT

This contract is assignable by Sandia to the Government or its designee. Contractor may not assign any interest in this contract without Sandia's advance written consent.

A13 - RELEASES VOID

Sandia's and the Government's representatives shall not be required to waive or release any personal rights in connection with any visits to Contractor's premises and Contractor agrees that no such waiver or release shall be pleaded by Contractor in any action or proceeding.

A16 - CONTRACTOR'S INFORMATION

No specifications, drawings, sketches, models, samples, tools, technical information or data, written, oral or otherwise, furnished by Contractor to Sandia hereunder, or in contemplation hereof, shall be considered to be proprietary information of Contractor.

A19 - TERMS AND CONDITIONS

The terms and conditions stated in this contract are the only ones governing this transaction and cannot be changed or terminated except in writing signed by the SCR. No terms and conditions appearing on any form originated by the Contractor shall be applicable unless signed by the SCR.

A20 - PERMITS

Except as otherwise directed in writing by the SCR, the Contractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the State, territory, and political subdivision in which the work under this contract is performed.

A23 - APPLICABLE LAW

The rights and obligations of the parties hereto shall be governed by, and this contract shall be interpreted in accordance with, federal law.

A27 - ORDER OF PRECEDENCE

In case of conflict or inconsistency between or among one or more provisions of the documents below which

govern this contract, the provisions of each document shall take precedence over the provisions of the other documents in the following order of priority: Section I, Signature Page, Section II, specifications, drawings, and other documents, if any, referenced therein.

A30 - PAYMENTS

(a) Payments on Account of Allowable Costs. Once each month (or at more frequent intervals, if approved by the SCR) the Contractor may submit to Sandia National Laboratories Supplier Services, Department, in such form and reasonable detail as may be required by the SCR, an invoice or voucher supported by a statement of costs incurred by the Contractor in the performance of this contract and claimed to constitute allowable costs. "Allowable costs" includes, but is not limited to, actual indirect rate cost experience during the period of performance unless Section I of this contract indicates otherwise. Promptly after receipt of each invoice or voucher Sandia shall, subject to the provisions of (b) below, make payment thereon in accordance with contract provisions. Costs for items of Capital Property (defined in FAR 52.245-5 Government Property) if applicable, shall be separately listed in invoices. Discount time will be computed from the date correct invoice or voucher is received in the office specified in the contract, or date of completion of work under this contract, whichever is later. Payment is deemed to be made, for the purpose of earning the discount, on the date of mailing of Sandia's check. Sandia may take contract or invoice prompt payment discount. Any travel outside the United States by Contractor personnel, in connection with work under this contract, requires advance written approval by the SCR.

(b) Audit Adjustments. At any time or times prior to settlement under this contract the SCR may have invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the SCR, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(c) Completion Voucher. On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and provisions of (e) below) Sandia shall promptly pay to the Contractor any balance of allowable cost. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than 60 days (unless the SCR grants a further specific period of time) from the date of such completion.

(d) Applicable Credits. The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to Sandia to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by Sandia under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the SCR.

(e) Financial Settlement. Prior to final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment under this contract shall execute and deliver: (1) an assignment to Sandia in form and substance satisfactory to the SCR of refunds, rebates, credits or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by Sandia under this contract; and (2) a release discharging Sandia and the Government, their officers, agents and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions: (i) specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor; (ii) claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the SCR not more than three (3) years after the date of the release or the date of any notice to the Contractor that Sandia is prepared to make final payment, whichever is earlier; and (iii) claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of Sandia or the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents. The Contractor and each such assignee hereby agree that the failure to execute and deliver the aforesaid assignment and release within sixty (60) days of a written request therefor by the SCR shall be deemed to be and shall have the same effect as a release as set forth above in item (2), including a release of all claims set forth in subitems (i)-(iii) of such item (2).

A31 - TAXES

(a) Except as may be otherwise provided in this contract, the price includes all applicable Federal, State, and Local taxes and duties.

(b) If performance occurs in New Mexico the clause at FAR 52.229-10 State of New Mexico Gross Receipts and

Compensating Tax is applicable.

(c) Sandia holds California Seller's Permit Number OH-98033576. Purchases made under this contract are exempt from California Sales and Use Taxes if performance occurs in California.

A32 - ESTIMATES OF COST AND LIMITATION OF OBLIGATION, IF APPLICABLE

(a) Initial Estimate of Cost and Obligation of Funds. The presently estimated cost and the obligation of funds for the work under this contract are set forth in Section I, if applicable.

(b) Revised Estimates of Cost. The presently estimated cost for the work under this contract may be increased unilaterally by the SCR by written notice to the Contractor and may be increased or decreased by written agreement of the parties.

(c) Limitation of Obligation. Payments on account of costs shall not in the aggregate exceed the amount of funds presently obligated hereunder.

(d) Notice of Costs Approaching Funds Obligated - Contractor Excused Pending Increase When Obligation is Reached. Whenever the Contractor has reason to believe that the total cost of the work under this contract will be greater or substantially less than the presently estimated cost of the work, the Contractor shall promptly notify the SCR in writing. The Contractor shall also notify the SCR in writing when the aggregate of expenditures, liabilities, and outstanding commitments allowable under this contract is equal to seventy five percent (75%) (or such other percentage as the SCR may from time to time establish by notice to the Contractor) of the amount of funds presently obligated hereunder. When such expenditures and outstanding commitments equal one hundred percent (100%) of such amount, the Contractor shall make no further commitments or expenditures (except to meet existing commitments) and shall be excused from further performance of the work unless and until the SCR thereafter shall have notified the Contractor in writing that such amount has been increased. No notice, communication or representation in any other form or from any person other than the SCR or the person delegated in this contract shall affect the estimated cost or funds obligated hereunder. In the absence of the specified notice, Sandia shall not be obligated to reimburse the Contractor for any costs in excess of the funds obligated hereunder, whether those excess costs were incurred during the course of the contract or as a result of termination. In the event the Contractor incurs cost in excess of the funds obligated hereunder without receiving a prior notice from the SCR increasing such funds, the funds obligated hereunder may be increased at the sole discretion of the SCR to permit the Contractor to be reimbursed for all or a portion of such costs. However the SCR is not obligated to increase funding due to an after-the-fact indirect rate adjustment determined by a Government audit agency. When and to the extent that the funds obligated hereunder have been increased, any costs incurred by the Contractor in excess of the funds obligated hereunder prior to such increase shall be allowable to the same extent as if such costs had been incurred after such increase, unless the SCR issues a termination notice and directs that the increase is solely for the purpose of covering termination expenses. In the event this contract is terminated or the funds obligated hereunder are not increased enough to cover all costs, the Government shall be entitled to all property produced or purchased under the contract except that property which the Contractor shall demonstrate to have been produced or purchased solely with Contractor's funds in excess of the funds obligated hereunder and which can be severed from the Government property without damage thereto.

(e) Sandia's Right to Terminate Not Affected. The giving of any notice by either party under this Clause shall not be construed to waive or impair any right of Sandia to terminate this contract under the provisions of the Clause entitled "Termination."

(f) Cost Information. The Contractor shall maintain current actual cost information adequate to reflect the cost of performing the work under this contract at all times while the work is in progress, and shall prepare and furnish to Sandia such written estimates of cost and information in support thereof as the SCR may request.

(g) Correctness of Estimates Not Guaranteed. Neither Sandia nor the Contractor guarantees the correctness of any estimate of cost for performance of the work under this contract, and Contractor shall invoice Sandia at actual cost unless Section I of this contract provides otherwise.

A33 - ALLOWABLE COSTS

(a) Payment for allowable cost as hereinafter defined, shall constitute full and complete compensation for the performance of the work under this contract.

(b) "Allowable cost" of performing the work under this contract shall be the costs and expenses that are actually incurred by the Contractor, which are applicable and properly chargeable, either as directly incident or as allocable through appropriate distribution or apportionment, to the performance of the contract work in accordance with its terms, and are determined by the SCR to be allowable pursuant to this contract, including the additional provisions, if any, contained elsewhere in this contract relating to Advance Understanding on Particular Cost Items, and pursuant to Federal Acquisition Regulation part 31 as supplemented by part 931 of the Department of Energy Regulations (DEAR) in effect on the effective date of this contract and OMB Circular A21, subject to the

following:

(1) With respect to billing for indirect cost, Contractor shall bill for indirect cost at rates as close as possible to costs being experienced during contract performance. Contractor understands that contract overruns, due to under recovered indirect cost, may not be reimbursed by Sandia; and, over recoveries of indirect cost shall be payable upon demand, at any time, by the SCR. Contractor may, with the SCR's approval, bill at predetermined overhead and general and administrative rates applied to bases agreed upon by any Government Agency, which are determined in accordance with FAR part 31 as supplemented by the DEAR in effect on the effective date of this contract; provided, however, that the Contractor shall adjust the indirect billing to conform to actual cost within 60 days or the Contractor's normal monthly accounting cycle, whichever is earlier.

(2) In the absence of predetermined overhead rates as provided for in subparagraph (1) above, if at any time prior to the final determination of costs hereunder there exists a rate or rates established by any Government agency, based on audit of actual costs for the period of performance of the work hereunder or any substantial portion thereof, such rate or rates may, at the SCR's option, be used (after adjustment by Sandia if deemed appropriate, to reflect the application of cost principles contained in this Allowable Costs Clause and the DEAR and FAR Subparts referred to above) in determining allowable indirect costs hereunder.

(3) In the absence of predetermined overhead rates as provided for in subparagraph (1) above and in the absence of a rate or rates acceptable to Sandia as provided for in subparagraph (2) above, indirect cost shall be determined in accordance with FAR part 31. as supplemented by part 931 of the DEAR by a Sandia audit.

(4) No overtime premium costs, shift differential, holiday, or other premium pay for time worked on direct labor are authorized as direct charges to this contract except when paid for work: necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns, of production equipment, or occasional production bottlenecks of a sporadic nature; by indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting; in the performance of tests, industrial processes, laboratory procedures, loading or unloading of transportation media, and operations in flight or afloat, which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or which will result in lower cost to Sandia.

(5) As used in FAR Part 31 and DEAR 931 the words: "Contracting Officer" or "Field Office Manager" shall mean the SCR, "DOE" or "Sponsoring Agency" shall mean Sandia; "Federal Government" or "Government," in connection with Government agencies or Government property, shall mean the United States of America.

(6) Each individual Contractor employee salary amounting to \$100,000 or more annually is subject to advance approval of the SCR where 50 percent or more of such salary is to be reimbursed under DOE cost-type contracts for on site (Sandia/DOE premises) services.

A36 - FREIGHT CHARGES

(a) Freight and Parcel Bills. The Contractor shall transmit to the SCR, each calendar quarter a legible copy of paid freight and parcel bills covering property transported to the Contractor during the quarter for the account of, and on which Sandia will assume the freight or parcel charges under the direct cost provisions of this contract; provided, however, that the following paid bills shall not be submitted to the SCR but shall be retained by the Contractor: rail freight forwarder, air, steamship, motor truck, and parcel bills amounting to less than \$500. All bills shall be marked on the face, "This shipment is for the U.S. Department of Energy. It is subject to the terms and conditions of the U.S. Government Bill of Lading form and to any available special rates or charges."

(b) Excess Freight Charges. When Sandia pays any amounts for freight charges in connection with this contract, Contractor is responsible for and shall pay to Sandia the amount of any excess freight charges if the routing specified in writing by the SCR is not used. If the specified routing cannot be used, Contractor shall promptly notify the SCR before shipment, and obtain new routing directions from the SCR.

A41 - CHANGES

(a) The SCR may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following: (1) Statement of Work, drawings, designs, or specifications; (2) method or manner of performance; (3) method of shipment or packaging; and (3) place of delivery.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the SCR shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; and (2) other affected terms and shall modify the contract accordingly.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the SCR decides that the facts justify it, the SCR may receive and act upon a

proposal submitted before final payment of the contract.

(d) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds Clause of this contract.

A50 - RELEASE OF INFORMATION

No information relating to this contract shall be released other than to Contractor's employees or those of Contractor's subcontractors requiring the information for performance of their duties, without advance written approval of the SCR. In no event shall the interest of Sandia or the DOE or the Government in this contract be indicated in any advertising or publicity without advance written approval of the SCR. This shall not be construed to prohibit Contractor from fulfilling required internal reporting requirements, if any.

A53 - SANDIA PROVIDED INFORMATION

(a) All RECORDS furnished by Sandia to the Contractor shall remain the property of the Government.

(b) Such RECORDS shall be used only for the purpose of enabling performance of this contract and the Contractor shall use its best efforts to prevent disclosure to others except when necessary in the performance of this contract.

A72 - RESPONSIBILITY FOR SUPPLIES

Title to supplies furnished under this contract shall pass to the Government upon formal acceptance by Sandia.

The risk of loss of or damage to supplies shall remain with the Contractor until acceptance by Sandia.

A73 - NEW MATERIALS

Unless otherwise specified in this Contract, all materials delivered to Sandia shall be new. New is defined as previously unused which may include residual inventory or unused Government material/equipment as provided in this Contract.

A74 - GOVERNMENT MATERIAL/EQUIPMENT

Except as provided for in Section I, Contractor must list the Government material/equipment Contractor will use in the performance of the Statement of Work and provide details concerning its use.

A75 - FALSE STATEMENTS

Contractor must provide full, accurate, and complete information as required by the RFQ, this Contract and any attachments. The penalty for making false statements in is prescribed in 18 U.S.C. 1001.

A99 - TERMS AND CONDITIONS INCORPORATED BY REFERENCE

This document incorporates Federal Acquisition Regulation (FAR) or Department of Energy Acquisition Regulation (DEAR) clauses by references with the same force and effect as if they were included in full text. All of these clauses may be found in title 48 of the Code of Federal Regulations. Where the FAR/DEAR clauses refer to Government and Contracting Officer, substitute Sandia and Sandia Contracting Representative (SCR).

The following clauses apply to contracts at any value.

DEAR 970.5203-3 - Buy American Act

FAR 52.222-3 - Convict Labor

FAR 52.207 - Anti Kickback Procedures

FAR 52.223-2 - Clean Air and Water

FAR 52.203-3 - Gratuities

FAR 52.212-13 - Stop Work Order

FAR 52.223-3 - Hazardous Material Identification and Material Safety

FAR 52.245-5 - Government Property including Alternate I

FAR 52.246-9 - Inspection of Research and Development

FAR 52.249-5 - Termination for Convenience (Educational Institutions)

DEAR 970.5204-9 - Accounts, Records and Inspections

The following clauses apply to contracts exceeding \$2,500.

FAR 52.222-36 - Affirmative Action for Handicapped Workers

FAR 52.222-4 - Contract Work Hours and Safety Standards Act - Overtime Compensation

The following clauses apply to contracts that exceed \$10,000.

FAR 52.222-36 - Equal Opportunity

FAR 52.219-8 - Utilization of Small Business Concerns and Small Disadvantaged Business Concerns

FAR 52.222-20 - Walsh Healy Public Contracts Act

FAR 52.222-35 - Affirmative Action for Special Disabled and Vietnam Era Veterans

FAR 52.222-37 - Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era

DEAR 970.5204-62 - Environmental Protection

The following clauses apply to requests for quotation and contracts that exceed \$25,000.

D41 - REPORTING OF ROYALTIES

If any royalty payments are involved in this contract or are reflected in the contract price to Sandia or the Government, the Contractor agrees to report in writing to the DOE Patent Counsel (with notification by Patent Counsel to the SCR) during the performance of this contract and prior to its completion or final settlement, the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this contract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit the identification of the patents or other basis on which the royalties are to be paid. The approval of Sandia or of DOE of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made. ("Patent Counsel," as used in this clause, means the Patent Attorney, DOE, Albuquerque Operations Office, P. O. Box 5400, Albuquerque, New Mexico 87115.)

FAR 52.227-1 - Authorization and Consent

FAR 52.227-2 - Notice of Assistance Regarding Patent and Copyright Infringement

FAR 52.225-6 - Balance of Payments Program Certificate

FAR 52.225-7 - Balance of Payments Program

FAR 52.247-63 - Preference for U.S. Flag Air Carriers

FAR 52.247-64 - Performance for Privately Owned U.S. Flag Commercial Vessels

FAR 52.220-3 - Utilization of Labor Surplus Area

FAR 52.219-13 - Utilization of Women Owned Small Businesses

The following clause applies to requests for quotation and contracts that exceed \$100,000.

FAR 52.203-12 - Limitation of Payments to Influence Certain Federal Transactions

The following clauses apply to requests for quotation and contracts that exceed \$500,000.

F11 - TERMINATION OF DEFINED BENEFIT PENSION PLANS

In the event this contract or any amendment, thereto, required Current Cost or Pricing Data to be submitted, the Contractor shall promptly notify the Sandia Contracting Representative (SCR) in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or give a credit to Sandia or the Government for its equitable share. The Contractor shall include the substance of this clause in all subcontracts under this contract, which are subject to Current Cost or Pricing Data.

FAR 52.215-24 - Certified Cost or Pricing Data

**SECTION III
SUPPLEMENTAL TERMS AND CONDITIONS FOR ALL
COST REIMBURSEMENT OR AS ORDERED AGREEMENTS
WITH EDUCATIONAL INSTITUTIONS**

The following clauses apply to this contract only when specifically called out in section I. All section III clauses included in this contract must be included in all subcontracts of any tier, suitably modified to identify the parties.

FAR 52.230-1 - Cost Accounting Standards Notices and Certification

FAR 52.230-2 - Cost Accounting Standards Clauses - Full Coverage

DEAR 952.227-11 - Patent Rights Provisions
DEAR 952.227-75 - Rights-in-Data
FAR 52.227-16 - Additional Data Requirements
DEAR 952.227-76 - Rights in Data - Special Works
41 USC 351-357 - Service Contract Act of 1965, as Amended
FAR 52.219-6 - Small/Small Disadvantaged Business Set-Aside
FAR 52.219-8 - Small/Small Disadvantaged Business Size Standard and Representation
FAR 52.219-9(9)&(10) - Small Disadvantaged Business Concern Representation
FAR 52.204-2 - Classified Matter
DEAR 952.204-7 - Foreign Ownership, Control or Influence Over Contractor
DEAR 952.209-72 - Organizational Conflicts of Interest - Disclosure or Representation
DEAR 970.5204-59 - Whistle blower Protection for Contractor Employees
FAR 52.212-8 - Defense Priorities and Allocation System 15 CFR Part 700

605-PX ACCESS TO SANDIA COMPUTERS

If contractor personnel are granted access to Sandia Computers, all such personnel must agree to comply with Sandia policies and procedures before such access is granted. Contractor agrees to immediately remove any personnel who fail to comply with Sandia policies and procedures as soon as contractor becomes aware of such noncompliance or is notified by Sandia of such noncompliance.