

NUCLEAR REGULATORY COMMISSION

48 CFR Chapter 20

RIN 3150-AF52

Acquisition Regulation (NRCAR)

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the procurement of goods and services. The proposed rule is intended to meet the requirements of Public Law 103-355 (the Federal Acquisition Streamlining Act—FASA) and Public Law 104-106 (the Federal Acquisition Reform Act (FARA), and the Information Technology Management Reform Act (ITMRA.)) Both public laws modify and streamline Federal Acquisition Regulation (FAR) requirements. This proposed rule would eliminate obsolete coverage and make necessary technical and conforming amendments to the NRCAR. The NRCAR applies to all contracts including simplified acquisitions where specified and to modifications that require a justification for other than full and open competition.

DATES: Comments on the proposed rule must be received on or before February 22, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: *Submit written comments to:* The Secretary of the Commission; U.S. Nuclear Regulatory Commission; Attention: Rulemakings and Adjudications Staff; Washington, D.C. 20555. Copies of comments received may be examined or obtained for a fee at the NRC Public Document Room, 2120 L Street, NW, Lower Level, Washington, D.C. (telephone (202) 634-3273). You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (<http://www.nrc.gov>). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415-5906; e-mail CAG@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Timothy F. Hagan, Director, Division of Contracts and Property Management, Office of Administration, Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 415-7305.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Nuclear Regulatory Commission Acquisition Regulations (NRCAR) in 48 CFR Chapter 20 implement and supplement the government-wide Federal Acquisition Regulation (FAR) and ensure that the policies governing the procurement of goods and services within the NRC satisfy the needs of the agency. The NRCAR includes policies, procedures, solicitation provisions, and contract clauses needed to ensure effective and efficient evaluation, negotiation, and administration of procurements.

The NRCAR must now be updated to meet the requirements of Public Law 103-355 (the Federal Acquisition Streamlining Act—FASA) and Public Law 104-106 (the Federal Acquisition Reform Act (FARA), and the Information Technology Management Reform Act (ITMRA.)) Both public laws modify and streamline FAR requirements. In the process of updating the NRCAR to comply with FAR acquisition streamlining requirements, the NRC intends to eliminate obsolete coverage and make necessary technical and conforming amendments to its policies, procedures, solicitation provisions, and contract clauses. The NRC expects that any new reporting burden that would be incurred as a result of these changes would be offset by elimination of other reporting requirement burdens specific to this agency (e.g., pre-award proposal preparation requirements).

Summary of Changes

1. Part 2002—Definitions—This Part would be amended to add language designating Task and Delivery Order Ombudsman in accordance with FASA requirements.

2. Part 2003—Improper business practices and personal conflicts of interest—This Part would be amended to cite the Office of Government Ethics (OGE) regulations covering standards of conduct for federal employees rather than the NRC's regulation in this area. The OGE regulations were published at 61 FR 66830-66851 (December 18, 1996) and took effect on January 17, 1997. The OGE regulations supersede the NRC standards of conduct regulations which were previously found in 10 CFR Part 0. Standards of conduct and requirements for financial disclosure are now published in 5 CFR Parts 2635, 5801 and 2634 respectively. 10 CFR Part 0 has been eliminated.

3. Part 2009—Contractor Qualifications—This Part would be amended at § 2009.1 "Responsible

prospective contractors". The language under § 2009.100 would be simplified to enhance understanding of the NRC's policy covering award of contracts to former NRC employees and award of contracts to firms which employ former NRC employees. The language would also clarify which procurement actions are considered noncompetitive for the purposes of this policy.

a. The NRC requires information provided under § 2052.209-70 "Current/Former Agency Employee Involvement" to ensure that conflict of interests are avoided and fairness is maintained during the selection process. Section 2052.209-71 "Contractor Organizational Conflicts of Interest (representation)" is required by statute (42 U.S.C. Sec. 2221, Sec. 170A of the Atomic Energy Act of 1954, as amended). The Certification requirement of both sections, which required a high level review within a contractor's organization, would be downgraded to a Representation requirement. This action is intended to lessen a contractor's reporting burden pursuant to Section 4301 of PL 109-106 (FARA).

4. Part 2009.5—Organizational Conflicts of Interest—This Part would be amended to bring the definition of "Subcontractor" found in § 2009.570-2 into conformance with Section 170A of the Atomic Energy Act.

5. Part 2010—Specifications, Standards, and Other Purchase Descriptions—This Part, as well as § 2010.004—Brand name products or equal, would be deleted in their entirety. FAR Part 10 is now devoted to Market Research. Guidance on the use of brand name products is now found under FAR Part 11. FAR Subpart 11.104 describes brand name product as "Items peculiar to one manufacturer." The FAR now allows some flexibility in acquiring brand name products which is not evident in the current NRCAR prescription and clause (§ 2052.210-70). Some restriction on ordering brand name products is evident in FAR 6.302-1 which requires a sole source justification for such purchases. Also, the basis for not providing for maximum practicable competition must now be documented in the file when the acquisition is awarded using simplified acquisition procedures.

6. Part 2015—Contracting By Negotiation—This Part would be amended in keeping with changes made under the NRC's Procurement Reinvention Laboratory. Sections 2015.209-70(b) and § 2052.215-75 encourage the contracting officer to ask Offerors to submit technical and management proposals either by an oral

presentation or by a written document. Section 2015.209–70(b) further clarifies that proposal preparation instructions be tailored to assure that all sections of the instructions reflect a one-to-one relationship to the evaluation criteria. Section 2015.304 would allow the contracting officer flexibility in selection evaluation procedures/criteria (e.g., weighted criteria or evaluations based upon non-weighted narrative evaluations) which are appropriate to the type of solicitation and requirement. Section 2015.304 would also encourage the contracting officer to use a minimum number of evaluation factors by referencing FAR § 15.304(b). This section of the FAR emphasizes that evaluation factors and significant subfactors must represent key areas of importance and emphasis to be considered in the source selection decision.

7. Part 2016—Types of Contracts— This Part would be amended to allow the CO the flexibility to negotiate ceiling rates for indirect costs and to streamline the task order technical proposal language.

8. Part 2032—Contract Financing— § 2032.4—This Part would be amended to bring its language in line with FAR Part 32.4 which covers advance payments for non-commercial items.

9. Part 2025—Foreign Acquisition— This Part would be deleted in its entirety due to a regulatory change in FAR Part 2025. The NRCAR previously required the contracting officer to approve a written determination not to acquire US-produced supplies for public use. The Head of the Contracting Activity (HCA) was required to approved such a determination for acquisitions which exceeded \$1 million. FAR § 25.102 has since been revised to give the contracting officer some flexibility in making the nonavailability of US-produced supplies determination. FAR § 25.102 has done this by eliminating the requirement and dollar threshold for HCA approval of the contracting officer's determination, and stating that the HCA may (vice "must" under previous FAR language) make a nonavailability determination for any circumstance other than what was considered by the contracting officer. Due to this regulatory change, NRCAR coverage of foreign acquisitions is no longer needed.

10. Part 2033—Protests, Disputes and Appeals— This Part would be amended to clarify agency procedures for responding to agency protests and for handling disputes and appeals pursuant to the Contracts Dispute Act. This Part would be amended to update the

address for the U.S. Department of Energy Board of Contract Appeals.

11. Part 2035 Research and Development Contracting— This Part would be amended to give the contracting officer flexibility to choose the evaluation criteria which will be used to select contractors under Broad Agency Announcements.

Administrative Procedure Act

Section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking. However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. OFPP Policy Letter 83–2 states that an agency must provide an opportunity for public comment before adopting procurement regulation if the regulation is "significant." "Significant" is defined generally as something which has an effect beyond the internal operating procedures of the agency or has a cost or administrative impact on contractors.

The NRC has determined that this rule is not significant within the meaning of OFPP Policy Letter No. 83–2. This regulation is issued principally to combine previously cleared procedures into one document, to exercise delegations established by the FAR, and to adopt other procedures that will not have a cost or administrative impact on contractors.

While not required to do so under the terms of the OFPP Policy Letter 83–2, the NRC is issuing the revised NRC Acquisition Regulation (NRCAR) as a proposed rule. The NRC is accepting comments on this regulation for 75 days after the date of publication. The NRC will review all comments and will consider changes to the rule, as proposed, as a result of comments received.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in the categorical exclusion set forth in 10 CFR 51.22(c)(5). Therefore, neither an environmental impact statement nor an environmental assessment is required for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction

Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Because the proposed rule will reduce existing information collection requirements, the public burden for this information collection is expected to be decreased by 3.2 hours per potential contractor. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues.

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

Send comments on any aspect of this proposed information collection, including suggestions for further reducing the burden, to the Records Management Branch (T6 F–33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0169), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by January 7, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

This proposed rule would amend the procedures and requirements necessary to implement and supplement the FAR. The proposed rule presents

amendments to the regulations necessary to ensure that the regulations governing the procurement of goods and services within the NRC satisfies the particular needs and requirements of the NRC. This proposed rule constitutes an administrative action governing the procurement activities of the NRC. These provisions would not have an adverse economic impact on any contractor or potential contractor because they merely supplement the requirements applicable to the acquisition of goods and services by the agency. By clearly and explicitly implementing the FAR and presenting those additional provisions necessary to reflect the needs of the NRC, the proposed rule would allow a contractor or potential contractor to understand more clearly the regulations to be used in soliciting, evaluating and awarding contracts for the provision of goods and services. This constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule would amend the procedures and requirements necessary to implement and supplement the FAR which govern the acquisition of goods and services by the NRC. To the extent that the proposed rule affects a small entity, it sets out provisions applicable to small business, disadvantaged business, and women-owned business concerns.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this proposed rule because it does not involve any provision which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

48 CFR Parts 2001, 2002, 2003, 2004, and 2005

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2009

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and record-keeping requirements.

48 CFR Parts 2011 and 2013

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Parts 2014 and 2015

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and record-keeping requirements.

48 CFR Parts 2016 and 2017

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2019

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and record-keeping requirements.

48 CFR Parts 2022 and 2024

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2027

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and record-keeping requirements.

48 CFR Parts 2030, 2031, 2032, 2033, and 2035

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2042

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and record-keeping requirements.

48 CFR Part 2045

Government procurement, Nuclear Regulatory Commission Acquisition Regulations Reporting and record-keeping requirements.

48 CFR Part 2052

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and record-keeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 553, and FAR Subpart 1.3, the NRC is proposing to revise Chapter 20 to Title 48 of the Code of Federal Regulations in its entirety to read as follows:

CHAPTER 20—NUCLEAR REGULATORY COMMISSION

SUBCHAPTER A—GENERAL

PART 2001—NUCLEAR REGULATORY COMMISSION ACQUISITION REGULATION SYSTEM

Subpart 2001.1—Purpose, Authority, Issuance

Sec.

2001.101 Purpose.

2001.102 Authority.

2001.103 Applicability.

2001.104 Issuance.

2001.104-1 Publication and code arrangement.

2001.104-2 Arrangement of the regulations.

2001.104-3 Copies.

2001.105 Information collection requirements: OMB approval.

Subpart 2001.3—Agency Acquisition Regulations

2001.301 Policy.

2001.303 Public participation.

Subpart 2001.4—Deviations From the FAR and the NRCAR

2001.402 Policy.

2001.403 Individual deviations.

2001.404 Class deviations.

Subpart 2001.6—Contracting Authority and Responsibilities

2001.600-70 Scope of subpart.

2001.601 General.

2001.602-3 Ratification of unauthorized commitments.

2001.603 Selection, appointment, and termination of appointment.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841; 41 U.S.C. 418(b)).

Subpart 2001.1—Purpose, Authority, Issuance

2001.101 Purpose.

This subpart establishes Chapter 20, the Nuclear Regulatory Commission Acquisition Regulation (NRCAR), and provides for the codification and publication of uniform policies and procedures for acquisitions by the NRC. The NRCAR is not, by itself, a complete document. It must be used in conjunction with the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).

2001.102 Authority.

The NRCAR and the amendments to it are issued by the Senior Procurement Executive under a delegation from the Executive Director for Operations dated May 16, 1997, in accordance with the authority of the Atomic Energy Act of 1954, as amended (42 U.S.C. 161), the Energy Reorganization Act of 1974 (42 U.S.C. 5841, 5872), the Federal Property and Administrative Services Act of 1949

(40 U.S.C. 486(c)), as amended, FAR Subpart 1.3, and other applicable law.

2001.103 Applicability.

The FAR and NRCAR apply to all NRC acquisitions of supplies and services which obligate appropriated funds, except as exempted by Sections 31 and 161 of the Atomic Energy Act of 1954 as amended, and Section 205 of the Energy Reorganization Act of 1974 as amended. For procurements made from nonappropriated funds, the Director, Division of Contracts and Property Management, shall determine the rules and procedures that apply.

2001.104 Issuance.

2001.104-1 Publication and code arrangement.

(a) The NRCAR and its subsequent changes are:

(1) Published in the daily issue of the **Federal Register**; and

(2) Codified in the Code of Federal Regulations (CFR).

(b) The NRCAR is issued as 48 CFR Chapter 20.

2001.104-2 Arrangement of the regulations.

(a) *General.* Chapter 20 is divided into parts, subparts, sections, subsections, paragraphs, and further subdivisions as necessary.

(b) *Numbering.* The numbering system and part, subpart and section titles used in this Chapter 20 conform with those used in the FAR as follows:

(1) Where Chapter 20 implements the FAR or supplements a parallel part, subpart, section, subsection, or paragraph of the FAR, that implementation or supplementation is numbered and captioned to the FAR part, subpart, section, or subsection being implemented or supplemented, except that the implementation or supplementation is preceded with a 20 or 200 so that there will always be four numbers to the left of the decimal. For example, NRC's implementation of FAR 1.104-1 is shown as 2001.104-1 and the NRC's implementation of FAR 24.1 is shown as 2024.1.

(2) When NRC supplements material contained in the FAR, it is given a unique number containing the numerals "70" or higher. The rest of the number parallels the FAR part, subpart, section, subsection, or paragraph it is supplementing. For example, Section 170A of the Atomic Energy Act of 1954, as amended, requires a more comprehensive organizational conflict of interest review for NRC than is contemplated by FAR 9.5. This supplementary material is identified as 2009.570.

(3) Where material in the FAR requires no implementation or supplementation, there is no corresponding numbering in the NRCAR. Therefore, there may be gaps in the NRCAR sequence of numbers where the FAR requires no further implementation.

(c) *Citation.* The NRCAR will be cited in accordance with Federal Register Standards approved for the FAR. Thus, this section when referred to in the NRCAR is cited as 2001.104-2(c). When this section is referred to formally in official documents, such as legal briefs, it should be cited as "48 CFR 2001.104-2(c)." Any section of the NRCAR may be formally identified by the section number, e.g., "NRCAR 2001.104-2." In the NRCAR, any reference to the FAR will be indicated by "FAR" followed by the section number, for example FAR 1-104.

2001.104-3 Copies.

Copies of the NRCAR in **Federal Register** and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

2001.105 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150-0169.

(b) The information collection requirements contained in this part appear in sections 2009.570-3, 2009.570-5, 2009.570-8, 2014.201-670, 2027.305-3, 2042.570-1, 2042.803, 2045.371, 2052.204-70, 2052.204-71, 2052.209-70, 2052.209-71, 2052.209-72, 2052.211-70, 2052.211-71, 2052.211-72, 2052.211-72 Alternate 1, 2052.214-71, 2052.214-72, 2052.214-74, 2052.215-70, 2052.215-71, 2052.215-74, 2052.215-75, 2052.215-75 Alternate 1, 2052.215-75 Alternate 2, 2052.215-78, 2052.216-72, 2052.227-70, 2052.235-70, 2052.235-71, 2052.242-70, and 2052.242-71.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information

collection requirements and control numbers under which they are approved are as follows:

(1) In 2052.215-77(a) and 2052.215-78(b), NRC Form 445 is approved under control number 3150 **to be assigned**.

(2) [Reserved]

Subpart 2001.3—Agency Acquisition Regulations

2001.301 Policy.

Policy, procedures, and guidance of an internal nature will be promulgated through internal NRC issuances such as Management Directives or Division of Contracts and Property Management Instructions.

2001.303 Public participation.

FAR 1.301 and Section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 418b) require rulemaking for substantive acquisition rules, but allow discretion in the matter for other than significant issues meeting the stated criteria. Accordingly, the NRCAR has been promulgated and may be revised from time to time in accordance with FAR 1.301. This procedure for significant subject matter generally involves issuing a notice of proposed rulemaking, inviting public comment, review and analysis of comments received, and publication of a final rule. The final rule includes a discussion of the public comments received and describes any changes made as a result of the comments.

Subpart 2001.4—Deviations From the FAR and the NRCAR

2001.402 Policy.

(a) Deviations from the provisions of the FAR or NRCAR may be granted as specified in this subpart when necessary to meet the specific needs of the requesting office. The development and testing of new techniques and methods of acquisition should not be discouraged simply because such action would require a FAR or NRCAR deviation.

(b) Requests for authority to deviate from the provisions of the FAR or the NRCAR must be signed by the requesting office and submitted to the Director, Division of Contracts and Property Management, in writing as far in advance as possible. Each request for deviation must contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR or NRCAR from which a deviation is requested;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contract affected;

(4) A description of the intended effect of the deviation;

(5) A statement of the period of time for which the deviation is needed; and

(6) Any pertinent background information which will contribute to a full understanding of the desired deviation.

2001.403 Individual deviations.

In individual cases, deviations from either the FAR or the NRCAR will be authorized only when essential to effect only one contracting action or where special circumstances make the deviations clearly in the best interest of the Government. Individual deviations must be authorized in advance by the Director, Division of Contracts and Property Management.

2001.404 Class deviations.

Class deviations affect more than one contracting action. Where deviations from the FAR or NRCAR are considered necessary for classes of contracts, requests for authority to deviate must be submitted in writing to the Director, Division of Contracts and Property Management, who will consider the submission jointly with the Chairperson of the Civilian Agency Acquisition Council, as appropriate.

Subpart 2001.6—Contracting Authority and Responsibilities

2001.600–70 Scope of subpart.

This subpart deals with the placement of contracting authority and responsibility within the agency, the selection and designation of contracting officers, and the authority of contracting officers.

2001.601 General.

(a) Contracting authority vests in the Chairman. The Chairman has delegated this authority to the Executive Director for Operations (EDO). The EDO has delegated this authority to the Deputy Executive Director for Management Services (DEDM). The DEDM has delegated this authority to the Director, Office of Administration (ADM). The Director, ADM, has delegated the authority to the Director, Division of Contracts and Property Management, who, in turn, makes contracting officer appointments within the Headquarters and the Regional Offices. All of the above delegations are formal written delegations containing dollar limitations and conditions.

(b) The Director, Division of Contracts and Property Management, establishes contracting policy throughout the agency; monitors the overall effectiveness and efficiency of the agency's contracting office; establishes controls to assure compliance with laws, regulations, and procedures; and delegates contracting officer authority.

2001.602–3 Ratification of unauthorized commitments.

(a) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting authority has not been delegated. Any unauthorized commitment may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FAR, the NRCAR, and good acquisition practice. Certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met under an unauthorized commitment; for example, the certification of the availability of funds, justification for other than full and open competition, competition of sources, determination of contractor responsibility, certification of current pricing data, price/cost analysis, administrative approvals, and negotiation of appropriate contract clauses.

(b) The execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may later be ratified. To be effective, the ratification must be in the form of a written procurement document clearly stating that ratification of a previously unauthorized commitment is intended. All ratifications of procurement actions valued at \$2,500 or less may be approved by the appropriate regional administrator or Headquarters contracting officer. For any such action, all other terms of Subpart 2001.6 are applicable. The Competition Advocate shall approve all ratification actions exceeding \$2,500 subsequent to the review and approval recommendation by the Director, Division of Contracts and Property Management.

(c) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority must be processed as follows:

(1) The Designating Official, responsible for the office request, shall furnish the contracting officer all records and documents concerning the commitment and a complete written

statement of facts, including, but not limited to:

(i) A written statement consistent with the complexity and size of the action as to why the contracting office was not used including the name of the employee who made the commitment;

(ii) A statement as to why the proposed contractor was selected;

(iii) A list of other sources considered;

(iv) A description of work performed, or to be performed, or products to be furnished;

(v) The estimated or agreed upon contract price;

(vi) A certification of the appropriated funds available;

(vii) A description of how unauthorized commitments in similar circumstances will be avoided in the future.

(2) The contracting officer shall review the written statement of facts for a determination of approval of all actions valued at \$2,500 or less. For actions greater than \$2,500, the contracting officer shall forward the written statement of facts to the Competition Advocate through the Director, Division of Contracts and Property Management with any comments or information that should be considered in evaluating the request for ratification.

(3) The NRC legal advisor may be asked for an opinion, advice, or concurrence if there is concern regarding the propriety of the funding source, appropriateness of the expense, or when some other legal issue is involved.

2001.603 Selection, appointment, and termination of appointment.

The Director, Division of Contracts and Property Management, is authorized by the Director, Office of Administration, to select and appoint contracting officers and to terminate their appointment as prescribed in FAR 1.603. Delegations of contracting officer authority are issued by memorandum which includes a clear statement of the delegated authority, including responsibilities and limitations in addition to the "Certificate of Appointment", SF 1402. The Director, Division of Contracts and Property Management, may delegate micro-purchase authority in accordance with agency procedures. Such delegation may be accomplished by written memorandum. (ref. FAR 1.603–3(b))

PART 2002—DEFINITIONS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841, and 41 U.S.C. 418(b).

Subpart 2002.1—Definitions**2002.100 Definitions.**

Agency means the Nuclear Regulatory Commission (NRC).

Agency Head or *Head of the Agency* means the NRC Executive Director for Operations, for the purposes specified in this chapter and the FAR. This delegation does not extend to internal NRC requirements such as clearance levels and Commission papers which specify higher levels of authority.

Commission means the NRC Commission of five members, or a quorum thereof, sitting as a body, as provided by Section 201 of the Energy Reorganization Act of 1974 (42 U.S.C. 5841).

Competition Advocate means the individual appointed as such by the Agency Head as required by Pub. L. 98-369. The Director, Office of Administration, has been appointed the Competition Advocate for the NRC.

Head of the Contracting Activity means the Director, Division of Contracts and Property Management.

Senior Procurement Executive means the individual appointed as such by the Agency Head pursuant to Executive Order 12352. The Deputy Executive Director for Management Services, has been appointed the NRC Senior Procurement Executive.

Simplified acquisitions means those acquisition conducted using the methods, policies and procedures of FAR Part 13 for making purchases of supplies or services.

Task and Delivery Order Ombudsman means the Director, Office of Administration, or designee pursuant to Section 1004(a) of Pub. L. 103-355, the Federal Acquisition Streamlining Act.

PART 2003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**Subpart 2003.1—Safeguards**

Sec.
2003.101-3 Agency regulations.

Subpart 2003.2—Contractor Gratuities to Government Personnel

Sec.
2003.203 Reporting of suspected violation of the gratuities clause.

Authority: 42 U.S.C. 2201; Sec. 201, 88 Stat. 1242, as amended; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2003.1—Safeguards**2003.101-3 Agency regulations.**

Standards of conduct for federal employees are published in 5 CFR Parts 2635 and 5801. Requirements for financial disclosure are published in 5 CFR Part 2634.

Subpart 2003.2—Contractor Gratuities to Government Personnel**2003.203 Reporting suspected violations of the gratuities clause.**

(a) Suspected violations of the "Gratuities" clause, FAR 52.203.3, must be reported orally or in writing directly to the NRC Office of the Inspector General. A report must include all facts and circumstances related to the case. Refer to 5 CFR 2635 for an explanation regarding what is prohibited and what is permitted.

(b) When appropriate, discussions with the contracting officer or a higher procurement official, procurement policy staff, and the procurement legal advisor prior to filing a report are encouraged.

PART 2004—ADMINISTRATIVE MATTERS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 481(b).

Subpart 2004.4—Safeguarding Classified Information Within Industry**2004.404 Contract clauses.**

(a) The contracting officer shall insert the clause at § 2052.204-70 Security, in all solicitations and contracts under which the contractor may have access to, or contact with, classified information, including National Security information, restricted data, formerly restricted data, and other classified data.

(b) The contracting officer shall insert the clause § 2052.204-71 Site Access Badge Requirements, in all solicitations and contracts under which the contractor will require access to Government facilities. The clause may be altered to reflect any special conditions to be applied to foreign nationals.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING**Part 2005—PUBLICIZING CONTRACT ACTIONS**

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577, 98 Stat. 3074 (41 U.S.C. 401 *et seq.*).

Subpart 2005.5—Paid Advertisements**2005.502 Authority.**

Before placing paid advertisements in newspapers and trade journals to publicize contract actions, written authority must be obtained from the Director, Division of Contracts and Property Management, for Headquarters

activities, or the Director, Division of Resource Management and Administration, within each regional office for a regional procurement.

Part 2009—CONTRACTOR QUALIFICATIONS**Subpart 2009.1—Responsible Prospective Contractors**

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Subpart 2009.5—Organizational Conflicts of Interest

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2009.570-8 Subcontracts.
2009.570-9 Waiver.
2009.570-10 Remedies.

Authority: 42 U.S.C. 2201; Sec. 201, 88 Stat. 1242; as amended; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2009.1—Responsible Prospective Contractors**2009.100 NRC policy.**

(a) It is NRC policy that only competitively awarded contracts shall be placed with an individual who was employed by the NRC within two years from the date of the Request for Procurement Action. This policy also pertains to any firm in which the former NRC employee is a partner, principal officer, majority stockholder, principal investigator, project manager, principal under the contract, a person who performs more than a nominal amount of the work under the NRC Statement of Work, or the firm is otherwise controlled or predominately staffed by former NRC employees.

(b) The following procurement actions are considered noncompetitive for the purposes of this policy:

- (1) Contracts awarded noncompetitively under the Small Business Administration's 8(a) Program;
- (2) Individual task orders if the former employee was not identified as "key personnel" in a proposal which was evaluated under competitive procedures;
- (3) Unsolicited proposals;
- (4) Subcontracts that require review for the purpose of granting consent under NRC prime contracts.

(c) The term *NRC employee* includes special Government employees performing services for NRC as experts, advisors, consultants, or members of advisory committees, if—

- (1) The contract arises directly out of the individual's activity as a special employee;
- (2) The individual is in a position to influence the award of the contract; or
- (3) The Contracting Officer determines that another conflict of interest exists.

(d) A justification explaining why it is in the best interest of the Government to contract with an individual or firm described in paragraphs (a) and (b) of this section on a noncompetitive basis may be approved by the Senior Procurement Executive after consulting with the Executive Director for Operations. This is in addition to any justification and approvals which may be required by the FAR for use of other than full and open competition.

(e) Nothing in this policy statement shall be construed as relieving former employees from obligations prescribed by law, such as 18 U.S.C. 207, Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches.

2009.105-70 Contract provisions.

The contracting officer shall insert the following provisions in all solicitations:

- (a) Section 2052.209-70 Current/Former Agency Employee Involvement.

Subpart 2009.4—Debarment, Suspension, and Ineligibility

2009.403 Definitions.

As used in 2009.4:

Debarring official means the Senior Procurement Executive.

Suspending official means the Senior Procurement Executive.

2009.404 Consolidated list of parties excluded from Federal procurement or non-procurement programs.

The contracting officer responsible for the contract affected by the debarment or suspension shall perform the actions required by FAR 9.404(c)(1)–(6).

2009.405 Effect of listing.

Compelling reasons are considered to be present where failure to contract with the debarred or suspended contractor would seriously harm the agency's programs and prevent accomplishment of mission requirements. The Senior Procurement Executive is authorized to make the determinations under FAR 9.405. Requests for these determinations must be submitted from the Head of the Contracting Activity, through the Director, Office of Administration, to the Senior Procurement Executive.

2009.405-1 Continuation of current contracts.

The Head of the Contracting Activity is authorized to make the determination to continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment in accordance with FAR 9.405-1.

2009.405-2 Restrictions on subcontracting.

The Head of the Contracting Activity is authorized to approve subcontracts with debarred or suspended subcontractors under FAR 9.405-2.

2009.406 Debarment.

2009.406-3 Procedures.

(a) *Investigation and referral.* When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for debarment, the case must be referred from the Head of the Contracting Activity, through the Director, Office of Administration, to the Senior Procurement Executive immediately. The case must be accompanied by a complete statement of the facts (including a copy of any criminal indictments, if applicable) along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter must first be referred to the Head of the Contracting Activity who will consult with the Office of the Inspector General to determine if further investigation is required prior to referring to the debarring official.

(b) *Decision-making process.* If, after reviewing the recommendations and consulting with the Office of the General Counsel and, if appropriate, the Office of the Inspector General, the debarring official determines debarment is justified, the debarring official shall initiate the proposed debarment in accordance with FAR 9.406-3(c) and notify the Head of the Contracting Activity of the action taken. If the

contractor fails to submit a timely written response within 30 days after receipt of the notice in accordance with FAR 9.406-3(c)(4), the debarring official may notify the contractor in accordance with FAR 9.406-3(d) that the contractor is debarred.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.406-3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned, and no later than 30 days after the contractor received the notice, if at all possible. The contractor and any specifically named affiliates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings must be conducted expeditiously and in such a manner that each party will have an opportunity to present all information considered pertinent to the proposed debarment.

2009.407 Suspension.

2009.407-3 Procedures.

(a) *Investigation and referral.* When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the case must be referred from the Head of the Contracting Activity, through the Director, Office of Administration, to the Senior Procurement Executive immediately. The case must be accompanied by a complete statement of the facts along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter must first be referred to the Head of the Contracting Activity who will consult with the Office of the Inspector General to determine if further investigation is required prior to referring the matter to the suspending official.

(b) *Decision-making process.* If, after reviewing the recommendations and consulting with the Office of the General Counsel, and if appropriate, the Office of the Inspector General, the suspending official determines suspension is justified, the suspending official shall initiate the proposed suspension in accordance with FAR 9.407-3(b)(2). The contractor shall be given the opportunity to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in FAR 9.406-3(b)(2). If the contractor fails to submit a timely written response within 30 days after receipt of the notice in accordance with FAR 9.407-3(c)(5),

the suspending official may notify the contractor in accordance with FAR 9.407-3(d) that the contractor is suspended.

2009.470 Appeals.

A debarred or suspended contractor may appeal the debarring/suspending official's decision by mailing or otherwise furnishing a written notice within 90 days from the date of the decision to the Executive Director for Operations. A copy of the notice of appeal must be furnished to the debarring/suspending official.

Subpart 2009.5—Organizational Conflicts of Interest

2009.500 Scope of subpart.

In accordance with 42 U.S.C. 2210a., NRC acquisitions are processed in accordance with 2009.570, which takes precedence over FAR 9.5 with respect to organizational conflicts of interest. Where non-conflicting guidance appears in FAR 9.5, that guidance must be followed.

2009.570 NRC organizational conflicts of interest.

2009.570-1 Scope of policy.

(a) It is the policy of NRC to avoid, eliminate, or neutralize contractor organizational conflicts of interest. The NRC achieves this objective by requiring all prospective contractors to submit information describing relationships, if any, with organizations or persons (including those regulated by the NRC) which may give rise to actual or potential conflicts of interest in the event of contract award.

(b) Contractor conflict of interest determinations cannot be made automatically or routinely. The application of sound judgment on virtually a case-by-case basis is necessary if the policy is to be applied to satisfy the overall public interest. It is not possible to prescribe in advance a specific method or set of criteria which would serve to identify and resolve all of the contractor conflict of interest situations that might arise. However, examples are provided in this chapter to guide application of this policy guidance. The ultimate test is as follows: Might the contractor, if awarded the contract, be placed in a position where its judgment may be biased, or where it may have an unfair competitive advantage?

(c) The conflict of interest rule contained in this subpart applies to contractors and offerors only. Individuals or firms who have other relationships with the NRC (e.g., parties to a licensing proceeding) are not

covered by this regulation. This rule does not apply to the acquisition of consulting services through the personnel appointment process, NRC agreements with other Government agencies, international organizations, or state, local, or foreign Governments. Separate procedures for avoiding conflicts of interest will be employed in these agreements, as appropriate.

2009.570-2 Definitions.

Affiliates means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

Contract means any contractual agreement or other arrangement with the NRC except as provided in § 2009.570-1(c).

Contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, affiliates thereof, or their successors in interest, including their chief executives, directors, key personnel (identified in the contract), proposed consultants or subcontractors, which are a party to a contract with the NRC.

Evaluation activities means any effort involving the appraisal of a technology, process, product, or policy.

Offeror or prospective contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, or their affiliates or successors in interest, including their chief executives, directors, key personnel, proposed consultants, or subcontractors, submitting a bid or proposal, solicited or unsolicited, to the NRC to obtain a contract.

Organizational conflicts of interest means that a relationship exists whereby a contractor or prospective contractor has present or planned interests related to the work to be performed under an NRC contract which:

(1) May diminish its capacity to give impartial, technically sound, objective assistance and advice, or may otherwise result in a biased work product; or

(2) May result in its being given an unfair competitive advantage.

Potential conflict of interest means that a factual situation exists that suggests that an actual conflict of interest may arise from award of a proposed contract. The term *potential conflict of interest* is used to signify those situations that—

(1) Merit investigation before contract award to ascertain whether award would give rise to an actual conflict; or

(2) Must be reported to the contracting officer for investigation if they arise during contract performance.

Research means any scientific or technical work involving theoretical analysis, exploration, or experimentation.

Subcontractor means any subcontractor of any tier who performs work under a contract with the NRC except subcontracts for supplies and subcontracts in amounts not exceeding \$10,000.

Technical consulting and management support services means internal assistance to a component of the NRC in the formulation or administration of its programs, projects, or policies which normally require that the contractor be given access to proprietary information or to information that has not been made available to the public. These services typically include assistance in the preparation of program plans, preliminary designs, specifications, or statements of work.

2009.570-3 Criteria for recognizing contractor organizational conflicts of interest.

(a) *General.* (1) Two questions will be asked in determining whether actual or potential organizational conflicts of interest exist:

(i) Are there conflicting roles which might bias an offeror's or contractor's judgment in relation to its work for the NRC?

(ii) May the offeror or contractor be given an unfair competitive advantage based on the performance of the contract?

(2) NRC's ultimate determination that organizational conflicts of interest exist will be made in light of common sense and good business judgment based upon the relevant facts. While it is difficult to identify and to prescribe in advance a specific method for avoiding all of the various situations or relationships that might involve potential organizational conflicts of interest, NRC personnel will pay particular attention to proposed contractual requirements that call for the rendering of advice, consultation or evaluation activities, or similar activities that directly lay the groundwork for the NRC's decisions on regulatory activities, future procurements, and research programs. Any work performed at an applicant or licensee site will also be closely scrutinized by the NRC staff.

(b) *Situations or relationships.* The following situations or relationships

may give rise to organizational conflicts of interest:

(1) The offeror or contractor shall disclose information, that may give rise to organizational conflicts of interest under the following circumstances. The information may include the scope of work or specification for the requirement, being performed, the period of performance, and the name and telephone number for a point of contact at the organization knowledgeable about the commercial contract.

(i) Where the offeror or contractor provides advice and recommendations to the NRC in the same technical area where it is also providing consulting assistance to any organization regulated by the NRC.

(ii) Where the offeror or contractor provides advice to the NRC on the same or similar matter on which it is also providing assistance to any organization regulated by the NRC.

(iii) Where the offeror or contractor evaluates its own products or services, or has been substantially involved in the development or marketing of the products or services of another entity.

(iv) Where the award of a contract would result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC, or would result in an unfair competitive advantage for the offeror or contractor.

(v) Where the offeror or contractor solicits or performs work at an applicant or licensee site while performing work in the same technical area for the NRC at the same site.

(2) The contracting officer may request specific information from an offeror or contractor or may require special contract clauses such as provided in § 2009.570-5(b) in the following circumstances:

(i) Where the offeror or contractor prepares specifications that are to be used in competitive procurements of products or services covered by the specifications.

(ii) Where the offeror or contractor prepares plans for specific approaches or methodologies that are to be incorporated into competitive procurements using the approaches or methodologies.

(iii) Where the offeror or contractor is granted access to information not available to the public concerning NRC plans, policies, or programs that could form the basis for a later procurement action.

(iv) Where the offeror or contractor is granted access to proprietary information of its competitors.

(v) Where the award of a contract might result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC or might result in an unfair competitive advantage for the offeror or contractor.

(c) *Policy application guidance.* The following examples are illustrative only and are not intended to identify and resolve all contractor organizational conflict of interest situations.

(1)(i) *Example.* The ABC Corp., in response to a Request For Proposal (RFP), proposes to undertake certain analyses of a reactor component as called for in the RFP. The ABC Corp. is one of several companies considered to be technically well qualified. In response to the inquiry in the RFP, the ABC Corp. advises that it is currently performing similar analyses for the reactor manufacturer.

(ii) *Guidance.* An NRC contract for that particular work normally would not be awarded to the ABC Corp. because the company would be placed in a position in which its judgment could be biased in relationship to its work for the NRC. Because there are other well-qualified companies available, there would be no reason for considering a waiver of the policy.

(2)(i) *Example.* The ABC Corp., in response to an RFP, proposes to perform certain analyses of a reactor component that is unique to one type of advanced reactor. As is the case with other technically qualified companies responding to the RFP, the ABC Corp. is performing various projects for several different utility clients. None of the ABC Corp. projects have any relationship to the work called for in the RFP. Based on the NRC evaluation, the ABC Corp. is considered to be the best qualified company to perform the work outlined in the RFP.

(ii) *Guidance.* An NRC contract normally could be awarded to the ABC Corp. because no conflict of interest exists which could motivate bias with respect to the work. An appropriate clause would be included in the contract to preclude the ABC Corp. from subsequently contracting for work with the private sector that could create a conflict during the performance of the NRC contract. For example, ABC Corp. would be precluded from the performance of similar work for the company developing the advanced reactor mentioned in the example.

(3)(i) *Example.* The ABC Corp., in response to a competitive RFP, submits a proposal to assist the NRC in revising NRC's guidance documents on the respiratory protection requirements of 10 CFR Part 20. ABC Corp. is the only

firm determined to be technically acceptable. ABC Corp. has performed substantial work for regulated utilities in the past and is expected to continue similar efforts in the future. The work has and will cover the writing, implementation, and administration of compliance respiratory protection programs for nuclear power plants.

(ii) *Guidance.* This situation would place the firm in a role where its judgment could be biased in relationship to its work for the NRC. Because the nature of the required work is vitally important in terms of the NRC's responsibilities and no reasonable alternative exists, a waiver of the policy, in accordance with 2009.570-9 may be warranted. Any waiver must be fully documented in accordance with the waiver provisions of this policy with particular attention to the establishment of protective mechanisms to guard against bias.

(4)(i) *Example.* The ABC Corp. submits a proposal for a new system to evaluate a specific reactor component's performance for the purpose of developing standards that are important to the NRC program. The ABC Corp. has advised the NRC that it intends to sell the new system to industry once its practicability has been demonstrated. Other companies in this business are using older systems for evaluation of the specific reactor component.

(ii) *Guidance.* A contract could be awarded to the ABC Corp. if the contract stipulates that no information produced under the contract will be used in the contractor's private activities unless this information has been reported to the NRC. Data on how the reactor component performs, which is reported to the NRC by contractors, will normally be disseminated by the NRC to others to preclude an unfair competitive advantage. When the NRC furnishes information about the reactor component to the contractor for the performance of contracted work, the information may not be used in the contractor's private activities unless the information is generally available to others. Further, the contract will stipulate that the contractor will inform the NRC contracting officer of all situations in which the information, developed about the performance of the reactor component under the contract, is proposed to be used.

(5)(i) *Example.* The ABC Corp., in response to a RFP, proposes to assemble a map showing certain seismological features of the Appalachian fold belt. In accordance with the representation in the RFP and 2009.570-3(b)(1)(i), ABC Corp. informs the NRC that it is presently doing seismological studies

for several utilities in the eastern United States, but none of the sites are within the geographic area contemplated by the NRC study.

(ii) *Guidance.* The contracting officer would normally conclude that award of a contract would not place ABC Corp. in a conflicting role where its judgment might be biased. Section 2052.209-72(c) Work for Others, would preclude ABC Corp. from accepting work which could create a conflict of interest during the term of the NRC contract.

(6)(i) *Example.* AD Division of ABC Corp., in response to a RFP, submits a proposal to assist the NRC in the safety and environmental review of applications for licenses for the construction, operation, and decommissioning of fuel cycle facilities. ABC Corp. is divided into two separate and distinct divisions, AD and BC. The BC Division performs the same or similar services for industry. The BC Division is currently providing the same or similar services required under the NRC's contract for an applicant or licensee.

(ii) *Guidance.* An NRC contract for that particular work would not be awarded to the ABC Corp. The AD Division could be placed in a position to pass judgment on work performed by the BC Division, which could bias its work for NRC. Further, the Conflict of Interest provisions apply to ABC Corp. and not to separate or distinct divisions within the company. If no reasonable alternative exists, a waiver of the policy could be sought in accordance with 2009.570-9.

(7)(i) *Example.* The ABC Corp. completes an analysis for NRC of steam generator tube leaks at one of a utility's six sites. Three months later, ABC Corp. is asked by this utility to perform the same analysis at another of its sites.

(ii) *Guidance.* Section 2052.290-72(c)(3) would prohibit the contractor from beginning this work for the utility until one year after completion of the NRC work at the first site.

(8)(i) *Example.* ABC Corp. is assisting NRC in a major on-site analysis of a utility's redesign of the common areas between its twin reactors. The contract is for two years with an estimated value of \$5 million. Near the completion of the NRC work, ABC Corp. requests authority to solicit for a \$100K contract with the same utility to transport spent fuel to a disposal site. ABC Corp. is performing no other work for the utility.

(ii) *Guidance.* The Contracting Officer would allow the contractor to proceed with the solicitation because it is not in the same technical area as the NRC work; and the potential for technical bias by the contractor because of

financial ties to the utility is slight due to the relative value of the two contracts.

(9)(i) *Example.* The ABC Corp. is constructing a turbine building and installing new turbines at a reactor site. The contract with the utility is for five years and has a total value of \$100 million. ABC Corp. has responded to an NRC Request For Proposal requiring the contractor to participate in a major team inspection unrelated to the turbine work at the same site. The estimated value of the contract is \$75K.

(ii) *Guidance.* An NRC contract would not normally be awarded to ABC Corp. since these factors create the potential for financial loyalty to the utility that may bias the technical judgment of the contractor.

(d) *Other considerations.* (1) The fact that the NRC can identify and later avoid, eliminate, or neutralize any potential organizational conflicts arising from the performance of a contract is not relevant to a determination of the existence of conflicts prior to the award of a contract.

(2) It is not relevant that the contractor has the professional reputation of being able to resist temptations which arise from organizational conflicts of interest, or that a follow-on procurement is not involved, or that a contract is awarded on a competitive or a sole source basis.

2009.570-4 Representation.

(a) The following procedures are designed to assist the NRC contracting officer in determining whether situations or relationships exist which may constitute organizational conflicts of interest with respect to a particular offeror or contractor. The procedures apply to small purchases meeting the criteria stated in the following paragraph (b) of this section.

(b) The organizational conflicts of interest representation provision at 2052.209-71 must be included in solicitations and contracts resulting from unsolicited proposals. The contracting officer must also include this provision for task orders and contract modifications for new work for:

- (1) Evaluation services or activities;
- (2) Technical consulting and management support services;
- (3) Research; and
- (4) Other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and would be included in the resulting contract. This representation requirement also applies to all modifications for additional effort under the contract except those issued under the "Changes" clause. Where,

however, a statement of the type required by the organizational conflicts of interest representation provisions has previously been submitted with regard to the contract being modified, only an updating of the statement is required.

(c) The offeror may, because of actual or potential organizational conflicts of interest, propose to exclude specific kinds of work contained in a RFP unless the RFP specifically prohibits the exclusion. Any such proposed exclusion by an offeror will be considered by the NRC in the evaluation of proposals. If the NRC considers the proposed excluded work to be an essential or integral part of the required work and its exclusion would be to the detriment of the competitive posture of the other offerors, the NRC shall reject the proposal as unacceptable.

(d) The offeror's failure to execute the representation required by paragraph (b) of this section with respect to an invitation for bids is considered to be a minor informality. The offeror will be permitted to correct the omission.

2009.570-5 Contract clauses.

(a) *General contract clause.* All contracts and simplified acquisitions of the types set forth in 2009.570-4(b) must include the clause entitled, "Contractor Organizational Conflicts of Interest," set forth in 2052.209-72.

(b) *Other special contract clauses.* If it is determined from the nature of the proposed contract that an organizational conflict of interest exists, the contracting officer may determine that the conflict can be avoided, or, after obtaining a waiver in accordance with 2009.570-9, neutralized through the use of an appropriate special contract clause. If appropriate, the offeror may negotiate the terms and conditions of these clauses, including the extent and time period of any restriction. These clauses include but are not limited to:

- (1) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related non-production contract previously performed by the contractor;
- (2) Software exclusion clauses;
- (3) Clauses which require the contractor (and certain of its key personnel) to avoid certain organizational conflicts of interest; and
- (4) Clauses which provide for protection of confidential data and guard against its unauthorized use.

2009.570-6 Evaluation, findings, and contract award.

The contracting officer shall evaluate all relevant facts submitted by an offeror and other relevant information. After evaluating this information against the

criteria of 2009.570-3, the contracting officer shall make a finding of whether organizational conflicts of interest exist with respect to a particular offeror. If it has been determined that real or potential conflicts of interest exist, the contracting officer shall:

- (a) Disqualify the offeror from award;
- (b) Avoid or eliminate such conflicts by appropriate measures; or
- (c) Award the contract under the waiver provision of 2009.570-9.

2009.570-7 Conflicts identified after award.

If potential organizational conflicts of interest are identified after award with respect to a particular contractor, and the contracting officer determines that conflicts do exist and that it would not be in the best interest of the Government to terminate the contract, as provided in the clauses required by 2009.570-5, the contracting officer shall take every reasonable action to avoid, eliminate, or, after obtaining a waiver in accordance with 2009.570-9, neutralize the effects of the identified conflict.

2009.570-8 Subcontracts.

The contracting officer shall require offerors and contractors to submit a representation statement from all subcontractors (other than a supply subcontractor) and consultants performing services in excess of \$10,000 in accordance with 2009.570-4(b). The contracting officer shall require the contractor to include contract clauses in accordance with 2009.570-5 in consultant agreements or subcontracts involving performance of work under a prime contract.

2009.570-9 Waiver.

(a) The contracting officer determines the need to seek a waiver for specific contract awards, with the advice and concurrence of the program office director and legal counsel. Upon the recommendation of the Senior Procurement Executive, and after consultation with legal counsel, the Executive Director for Operations may waive the policy in specific cases if he determines that it is in the best interest of the United States to do so.

(b) Waiver action is strictly limited to those situations in which:

- (1) The work to be performed under contract is vital to the NRC program.
- (2) The work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest.

(3) Contractual and/or technical review and surveillance methods can be employed by the NRC to neutralize the conflict.

(c) For any waivers, the justification and approval documents must be placed in the NRC Public Document Room.

2009.570-10 Remedies.

In addition to other remedies permitted by law or contract for a breach of the restrictions in this subpart or for any intentional misrepresentation or intentional nondisclosure of any relevant interest required to be provided for this section, the NRC may debar the contractor from subsequent NRC contracts.

PART 2011—DESCRIBING AGENCY NEEDS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2011.4—Delivery or Performance Schedules—Contract Clauses

2011.104-70 NRC Clauses.

(a) The contracting officer shall insert the clause at 2052.211-70 Preparation of Technical Reports, when deliverables include a technical report.

(b) The contracting officer shall insert the clause at 2052.211-71 Technical Progress Report, in all solicitations and contracts except—

- (1) Firm fixed price; or
- (2) Indefinite-delivery contracts to be awarded on a time-and-materials or labor-hour basis, or which provide for issuance of delivery orders for specific products/services (line items).

(c) The contracting officer shall insert the clause at 2052.211-72 Financial Status Report, in applicable cost reimbursement solicitations and contracts when detailed assessment of costs is warranted and a Contractor Spending Plan is required; use the clause at 2052.2211-72 Financial Status Report—Alternate 1 when no Contractor Spending Plan is required.

(d) The contracting officer may alter clauses 2052.211-70, 2052.211-71, and 2052.211-72 Alternate 1 prior to issuance of the solicitation or during competition by solicitation amendment. Reporting requirements should be set at a meaningful and productive frequency. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiations, without solicitation amendment.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2013—SIMPLIFIED ACQUISITION PROCEDURES [RESERVED]

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

PART 2014—SEALED BIDDING

Subpart 2014.2—Solicitation of Bids

Sec.

2014.201 Preparation of invitation for bids.

2014.201-670 Solicitation provisions.

Subpart 2014.4—Opening of Bids and Award of Contract

2014.407 Mistakes in bids.

2014.407-3 Other mistakes disclosed before award.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2014.2—Solicitation of Bids

2014.201 Preparation of invitation for bids.

2014.201-670 Solicitation provisions.

(a) The contracting officer may insert the provision at 2052.214-70, Prebid Conference, in Invitations for Bids (IFB) where there will be a prebid conference. This provision may be altered by the contracting officer to fit the circumstances of the procurement.

(b) The contracting officer may insert in IFBs the provision at 2052.214-71, Bidder Qualifications and Past Experience on an optional basis to fit the circumstances of the requirement;

(c) The contracting officer shall insert the provision at 2052.214-72 Bid Evaluation in all IFBs. Paragraph (f) of this provision is optional.

(d) The contracting officer shall insert the provision of 2052.214-73 Timely Receipt of Bids in all IFBs.

(e) The contracting officer shall insert the provision at 2052.214-74 Disposition of Bids in all IFBs.

Subpart 2014.4—Opening of Bids and Award of Contract

2014.407 Mistakes in bids.

2014.407-3 Other mistakes disclosed before award.

The Director, Division of Contracts and Property Management, is delegated the authority to make the determinations concerning mistakes in bids, including those with obvious clerical errors, discovered prior to award. These determinations will be concurred in by legal counsel prior to notification of the bidder.

2014.407-4 Mistakes after award.

The cognizant contracting officer is delegated the authority to make determinations concerning mistakes disclosed after award in accordance with FAR 14.407-4. These determinations will be concurred in by legal counsel prior to notification of the contractor.

PART 2015—CONTRACTING BY NEGOTIATION

Subpart 2015.2—Solicitation and Receipt of Proposals and Information

Sec.

2015.209–70 Solicitation provisions and contract clause

Subpart 2015.3—Source Selection

2015.300 Scope of part.

2015.303 Responsibilities.

2015.304 Evaluation factors.

2015.305 Proposal evaluation.

Subpart 2015.6—Unsolicited Proposals

2015.606 Agency procedures.

2015.606–1 Receipt and initial review.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2015.2—Solicitation and Receipt of Proposals and Information

2015.209–70 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert in solicitations and contracts the following clauses as applicable to the requirement:

(1) Section 2052.215–70, Key Personnel in applicable solicitations and contracts;

(2)(i) Section 2052.215–71, Project Officer Authority in applicable solicitations and contracts for cost-reimbursement, cost-plus-fixed-fee, cost-plus-award-fee, cost sharing, labor-hour or time-and-materials, including task order contracts. This clause and the following Alternate clauses are intended for experienced, trained project officers, and may be altered to delete duties where appropriate:

(ii) Section 2052.215–71 Alternate 1. For solicitations for issuance of delivery orders for specific products/services;

(iii) Section 2052.215–71 Alternate 2. For solicitations for firm fixed price contracts, with paragraph (b)(1) of Alternate 1 deleted and the remainder of the clause renumbered.

(3) The contracting officer shall insert the provision at 2052.215–72, Timely Receipt of Proposals in all solicitations;

(4) The contracting officer shall insert the provision at 2052.215–73, Award Notification and Commitment of Public Funds in all solicitations; and

(5) The contracting officer shall insert the provision at 2052.215–74, Disposition of Proposals in all solicitations.

(b) The contracting officer may insert in all solicitations the following provisions as applicable. These provisions may be altered to fit the circumstances of the requirement. These provisions shall be tailored to assure that all sections of the instructions for the Technical and Management

Proposal, or Oral Presentation and Supporting Documentation, reflect a one-to-one relationship to the evaluation criteria:

(1) Section 2052.215–75, Proposal Presentation and Format for negotiated procurements for cost type contracts;

(2) Section 2052.215–75 Alternate 1 may be used for all solicitations for negotiated task order contracts;

(3) Section 2015.215–75 Alternate 2 may be used for all solicitations for negotiated fixed price, labor hour, or time and materials contracts:

(c) The contracting officer shall insert the provision at 2052.215–76, PreProposal Conference, in solicitations which include a PreProposal conference. This provision may be altered to fit the circumstances of the requirement.

(d) The contracting officer shall insert the following clauses in solicitations and contracts as applicable:

(1) Section 2052.215–77, Travel Approvals and Reimbursement, shall be inserted in cost reimbursement solicitations and contracts which require travel but do not set a specific ceiling amount on that travel. Note that requests for foreign travel must be submitted to the NRC 30 days in advance of the travel date.

(2) Section 2052.215–78, Travel Approvals and Reimbursement—Alternate 1, shall be inserted in cost reimbursement solicitations and contracts which include a ceiling amount on travel. Note that requests for foreign travel must be submitted to the NRC 30 days in advance of the travel.

(e) The contracting officer shall include the following provisions in all solicitations for competitive procurements to describe the relationship of technical considerations to cost considerations. The contracting officer may make appropriate changes to these provisions to accurately reflect other evaluation procedures, such as evaluation of proposals against mandatory criteria and bench marking criteria for Information Technology (IT) procurements:

(1) Section 2052.215–79 Contract Award and Evaluation of Proposals, shall be included in all solicitations where technical merit is more important than cost,

(2) Section 2052.215–79 Alternate 1 shall be included when proposals are to be evaluated on a lowest price, technically acceptable basis.

(3) Section 2052.215–79 Alternate 2 shall be included where cost and technical merit are of equal significance.

Subpart 2015.3—Source Selection Processes and Techniques

2015.300 Scope of subpart.

This subpart applies to all contracts awarded on a competitive basis in accordance with FAR Part 15. This subpart does not apply to contracts awarded on a non-competitive basis to the Small Business Administration under Section 8(a) of the Small Business Act.

2015.303 Responsibilities.

(a) The source selection authority is the contracting officer. The contracting officer, acting as the source selection authority, shall select an offer for award based upon review of the Source Evaluation Panel's recommendation as contained in the reports described in paragraph (c) of this section.

(b) Any cancellation of solicitations and subsequent rejection of all proposals must be approved by the Head of the Contracting Activity.

(c) For all proposed contracts with total estimated values in excess of the simplified acquisition threshold and expected to result from competitive technical and price/cost negotiations, the cooperative review efforts of technical, contracting, and other administrative personnel are formalized through establishment of a Source Evaluation Panel. A single technical member may be appointed to the Source Evaluation Panel to evaluate proposals with the contracting officer's approval. In such instances, the Designating Official may appoint technical advisors (non-voting members) to assist the single technical member. Except in unusual cases, the Source Evaluation Panel should not exceed five members including the Chairperson. The Source Evaluation Panel's proposal evaluation report(s) may include a Competitive Range Report and a Final Evaluation Report (to be used when award will be made after conducting discussions), or a Recommendation for Award Report (to be used when award will be made without discussions).

(d) The Designating Official (Office Director or designee) is responsible for appointing a Source Evaluation Panel to evaluate competitive technical proposals in accordance with the solicitation technical criteria. The Designating Official is also responsible for conducting an independent review and evaluation of the Source Evaluation Panel's proposal evaluation report(s) to the contracting officer.

2015.304 Evaluation factors

The evaluation factors included in the solicitation serve as the standard against

which all proposals are evaluated and are the basis for the development of proposal preparation instructions, in accordance with FAR 15.304(b). Indication in the solicitation of the relative importance of evaluation factors and subfactors may be accomplished by the assignment of a numerical weight to each. For those solicitations which use numerical weights, those weights shall be stated in the solicitation. For those factors that will not be numerically weighted, only their relative importance will be stated in the solicitation. Examples of factors which may not be numerically weighted are conflict of interest, estimated cost, and "go/no go" evaluation factors.

2015.305 Proposal evaluation.

The contracting officer may provide offerors' cost proposals and supporting financial information to members of the Source Evaluation Panel at the same time technical proposals are distributed for evaluation. The Source Evaluation Panel shall use this information to perform an accurate integrated assessment of each offeror's proposal based on all the facts presented to them.

Subpart 2015.6—Unsolicited Proposals

2015.606 Agency procedures.

(a) The Division of Contracts and Property Management is the point of contact for the receipt, acknowledgment, and handling of unsolicited proposals.

(b) To ensure that the unsolicited proposal is logged into the unsolicited proposal tracking system, it must be submitted in an original and two copies, and requests for additional information regarding their preparation, must be submitted to: U.S. Nuclear Regulatory Commission, Division of Contracts and Property Management, Mail Stop T-7-I-2, Washington, DC 20555.

2015.606-1 Receipt and initial review.

(a) The Division of Contracts and Property Management shall acknowledge receipt of an unsolicited proposal, complete a preliminary review, assign a docket number, and send copies of the unsolicited proposal to the appropriate program office Director(s) or designee for evaluation.

(b) The Division of Contracts and Property Management shall be responsible for controlling reproduction and distribution of proposal material by notifying evaluators of their responsibilities and tracking the number of proposals received and forwarded to evaluators.

(c) An acknowledgment letter will be sent to the proposer by The Division of Contracts and Property Management, providing an estimated date for a funding decision or identifying the reasons for non-acceptance of the proposal for review in accordance with FAR 15.606-1(b) and FAR 15.606-1(c).

PART 2016—TYPES OF CONTRACTS

Subpart 2016.3—Cost Reimbursement Contracts

Sec.

2016.307-70 Contract provisions and clauses.

Subpart 2016.5—Indefinite-Delivery Contracts

2016.506-70 Contract provisions and clauses.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2016.3—Cost Reimbursement Contracts

2016.307-70 Contract provisions and clauses.

(a) The contracting officer shall insert the provision at 2052.216-70, Level of Effort, in solicitations for negotiated procurements containing labor costs other than maintenance services, to be awarded on a cost reimbursement, cost sharing, cost-plus-award fee, cost-plus-fixed fee, time and materials, or labor hour basis.

(b) The contracting officer may insert the following provisions and clauses in cost reimbursement contracts as applicable:

(1) Section 2052.216-71, Indirect Cost Rates (where provisional rates without ceilings apply).

(2) Section 2052.216-71, Indirect Cost Rates—Alternate 1 (where predetermined rates apply).

(3) Section 2052.216-71, Indirect Cost Rates (Ceiling)—Alternate 2 (where provisional rates with ceilings apply).

(c) The contracting officer may make appropriate changes to these clauses to reflect different arrangements.

Subpart 2016.5—Indefinite-Delivery Contracts

2016.506-70 Contract provisions and clauses.

The contracting officer shall insert the following clauses in all solicitations and contracts that contain task order procedures. These clauses may be altered by the contracting officer to fit the circumstances of the requirement.

(a) Section 2052.216-72, Task Order Procedures;

(b) Section 2052.216-73, Accelerated Task Order Procedures.

PART 2017—SPECIAL CONTRACTING METHODS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 481(b).

Subpart 2017.2—Options

2017.204 Contracts.

(a) The contracting officer may approve non-competitive extensions, within the limits of his/her delegation, to five-year contracts up to a total of an additional 6 months for the purpose of completing the competitive process for a follow-on contract, provided that the request for procurement action for a follow-on or replacement contract was received in the Division of Contracts and Property Management not less than 6 months before the end of the fifth year.

(b) Other extensions beyond five years must be approved by the Competition Advocate.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2019—SMALL BUSINESS PROGRAMS

Subpart 2019.7—Subcontracting with small business, small disadvantaged business, and women-owned small business concerns

Sec.

2019.705 Responsibilities of the contracting officer under the subcontracting assistance program.

2019.705-4 Reviewing the subcontracting plan.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2019.7—Subcontracting With Small Business, Small Disadvantaged Business, and Women-Owned Small Business Concerns

2019-705 Responsibilities of the contracting officer under the subcontracting assistance program.

2019.705-4 Reviewing the subcontracting plan.

(a) The contracting officer may accept the terms of an overall or "master" company subcontracting plan incorporated by reference into a specific subcontracting plan submitted by the apparent successful offeror/bid for a specific contract, only upon ensuring that the required information, goals and assurances are included in accordance with FAR 19.704.

PART 2022—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2022.1—Basic Labor Policies.

Sec.

2022.101-1 General

2022.103-4 Approvals.

Subpart 2022.9—Nondiscrimination Because of Age

2022.901-70 Contract provisions.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 4186 (b).

Subpart 2022.1—Basic Labor Policies

2022.101-1 General.

The Head of the Contracting Activity shall designate programs or requirements for which it is necessary that contractors be required to notify the Government of actual or potential labor disputes that are delaying or threaten to delay the timely contract performance. Contractor notification shall be made in accordance with FAR 52.222-1, "Notice to the Government of Labor Disputes."

2022.103-4 Approvals.

The agency approving official for contractor overtime shall be the contracting officer.

Subpart 2022.9—Nondiscrimination Because of Age

2022.901-70 Contract provisions.

The contracting officer shall insert the provision found at 2052.222-70, Nondiscrimination Because of Age, in all solicitations.

PART 2024—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2024.1—Protection of Individual Privacy

Sec.

2024.103 Procedures.

Subpart 2024.2—Freedom of Information Act

2024.202 Policy.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2024.1—Protection of Individual Privacy

2024.103 Procedures.

The provisions at 10 CFR Part 9, Subpart B, Privacy Act Regulations, are applicable to the maintenance or disclosure of information for a system of records on individuals.

Subpart 2024.2—Freedom of Information Act

2024.202 Policy.

The provisions at 10 CFR Part 9, Subpart A, Freedom of Information Act Regulations, are applicable to the availability of NRC records to the public.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2027—PATENTS, DATA, AND COPYRIGHTS

Subpart 2027.3—Patent Rights Under Government Contracts

Sec.

2027.305-3 Follow-up by Government.
2027.305-70 Solicitation provisions and contract clauses.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2027.3—Patent Rights Under Government Contracts

2027.305-3 Follow-up by Government.

(a) The contracting officer shall, as a part of the closeout of a contract, require each contractor to report in writing any patents, copyrights, or royalties attained using any portion of the contract funds.

(b) If no activity is to be reported, the contractor shall provide the following written determination before final payment and closeout of the contract:

(1) No inventions or discoveries were made,

(2) No copyrights were secured, produced, or composed,

(3) No notices or claims of patent or copyright infringement have been received by the contractor or its subcontractors, and

(4) No royalty payments were directly involved in the contract or reflected in the contract price to the Government, nor were any royalties or other payments paid or owed directly to others.

(c) The contracting officer may waive any of the requirements in paragraphs (b)(1) through (b)(4) of this section, after documenting the file to indicate the—

(1) Impracticability of obtaining the document(s); and

(2) Steps taken to attempt to obtain them.

(d) The contracting officer shall notify agency legal counsel responsible for patents whenever a contractor reports any patent, copyright, or royalty activity, and shall document the official file with the resolution to protect the Government's rights prior to making any final payment and closing out the contract.

2027.305-70 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 2052.227-70, Drawings, Designs, Specifications, and Data, in all solicitations and contracts in which drawings, designs, specifications, or other data will be developed and the NRC must retain full rights to them (except for the contractor's right to retain a copy for its own use). When any of the clauses prescribed at FAR 27.409, Solicitation Provisions and Contract Clauses, are included in the solicitation/contract, this clause will not be used.

PART 2030—COST ACCOUNTING STANDARDS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2030.2—CAS Program Requirements

2030.201-5 Waiver.

Requests to waive Cost Accounting Standards (CAS) requirements must be submitted to the Chairman, CAS Board by the Competition Advocate. The requests for waiver must be forwarded through the Head of the Contracting Activity with supporting documentation and rationale in accordance with FAR 30.201-5.

PART 2031—CONTRACT COST PRINCIPLES AND PROCEDURES

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2031.1—Applicability

2031.109-70 Contract clauses.

The contracting officer shall insert the clause at 2052.231-70, Precontract Costs, in all cost type contracts when costs in connection with work under the contract will be incurred by the contractor before the effective date of the contract. Approval for use of this clause must be obtained at one level above the contracting officer.

PART 2032—CONTRACT FINANCING

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2032.4—Advance Payments for Non-Commercial Items

2032.402 General.

(a) The contracting officer shall have the responsibility and authority for making findings and determinations and for approval of contract terms concerning advance payments.

(b) Before authorizing any advance payment agreements, except for subscriptions to publications, the

contracting officer shall coordinate with the Office of the Chief Financial Officer, Division of Accounting and Finance, to ensure completeness of contractor submitted documentation.

PART 2033—PROTESTS, DISPUTES, AND APPEALS

Subpart 2033.1—Protests

Sec.
2033.103 Protests to the agency.

Subpart 2033.2—Disputes and Appeals

Sec.
2033.204 Policy.
2033.211 Contract Claims—Contracting officer's decision.
2033.215 Contract clause.
Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2033.1—Protests

2033.103 Protests to the agency.

Protests to the agency shall first be considered by the contracting officer. In accordance with FAR 33.103(d)(4), the protestor may appeal the contracting officer's decision by delivering or providing a written request to the agency Director, Division of Contracts or Property Management, or designee, to conduct an independent review of the Contracting Officer's decision.

Subpart 2033.2—Disputes and Appeals

2033.204 Policy.

Final decisions of the NRC contracting officer on contract disputes and appeals issued pursuant to the Contracts Disputes Act will be heard by the Department of Energy Board of Contract Appeals (EBCA) pursuant to an interagency agreement between the NRC and the Department of Energy. The EBCA rules appear in 10 CFR part 1023.

2033.211 Contract Claims—Contracting officer's decision.

The contracting officer shall alter the paragraph at FAR 33.211(a)(4)(v) to identify the Energy Board of Contract Appeals and include its address: U.S. Department of Energy, Board of Contract Appeals, HG-50, Building 950, 1000 Independence Ave., SW, Washington, DC 20585, when preparing a written decision.

2033.215 Contract clause.

The contracting officer shall use the clause at FAR 52.233-1, Disputes, with its Alternate I, where continued performance is vital to National Security, the public health and safety, critical and major agency programs, or other essential supplies or services

whose timely reprourement from other sources would be impractical.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2035—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
2035.70 Contract clauses.
2035.71 Broad agency announcements.
Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

2035.70 Contract clauses.

(a) The contracting officer shall insert the following clause in all solicitations and contracts for research and development by private contractors and universities and for other technical services, as appropriate:

(1) Section 2052.235-70, Publication of Research Results;

(2) Section 2052.235-72 Safety, Health and Fire Protection.

2035.71 Broad agency announcements.

(a) Criteria for selecting contractors may include such factors as:

(1) Unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(2) Overall scientific, technical, or economic merits of the proposal.

(3) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(4) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(5) Potential contribution of the effort to NRC's mission.

(6) Overall standing among similar proposals available for evaluation and/or evaluation against the known state-of-the-art technology.

(b) Once a proposal is received, communication between the agency's scientific or engineering personnel and the principal investigator is permitted for clarification purposes only and must be coordinated through the Division of Contracts and Property Management.

(c) After evaluation of the proposals, the Designating Official shall submit a comprehensive evaluation report to the contracting officer which recommends the source(s) for contract award. The report must reflect the basis for the selection or nonselection of each proposal received.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2042—CONTRACT ADMINISTRATION

Subpart 2042.570—Differing Professional Views (DPV)

Sec.
2042.570-1 Policy.
2042.570-2 Solicitation and contract clauses.

Subpart 2042.8—Disallowance of Costs

Sec.
2042.803 Disallowing costs after incurrence.
Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 418(b).

Subpart 2042.570—Differing Professional Views

2042.570-1 Policy.

The Nuclear Regulatory Commission's (NRC) policy is to support the contractor's expression of professional health and safety-related concerns associated with the contractor's work for NRC that may differ from a prevailing NRC staff view, disagree with an NRC decision or policy position, or take issue with proposed or established agency practices. An occasion may arise when an NRC contractor, contractor's personnel, or subcontractor personnel believes that a conscientious expression of a competent judgment is required to document such concerns on matters directly associated with its performance of the contract. The procedure described in 2052.242-71, Procedures for Resolving NRC Contractor Differing Professional Views, provide for the expression and resolution of DPVs of health and safety-related concerns associated with the mission of the agency by NRC contractors, contractor personnel or subcontractor personnel on matters directly associated with its performance of the contract. The contractor shall provide a copy of the NRC DPV procedure to all of its employees performing under this contract and to all subcontractors who shall, in turn, provide a copy of the procedure to its employees. **Note:** The prime contractor or subcontractor shall submit all DPV's received but need not endorse them.

2042.570-2 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 2052.242-70, Resolving NRC Contractor Differing Professional Views, in the body of cost reimbursement solicitations and contracts for professional services, as

appropriate. This clause may not be altered by the contracting officer.

(b) The contracting officer shall include the clause at 2052.242-71, Procedures for Resolving NRC Contractor Differing Professional Views, as an attachment to cost reimbursement solicitations and contracts for professional services, as appropriate. This clause may not be altered by the contracting officer.

Subpart 2042.8—Disallowance of Costs

2042.803 Disallowing costs after incurrence.

(a) Vouchers and invoices submitted to NRC must be submitted to the contracting officer or designee for review and approval for payment. If the examination of a voucher or invoice raises a question regarding the allowability of a cost submitted, the contracting officer or designee shall:

(1) Hold informal discussions with the contractor as appropriate.

(2) If the discussions do not resolve the matter, the contracting officer shall issue a notice advising the contractor of costs disallowed. The notice must advise the contractor that it may:

(i) If in disagreement with the disallowance, submit a written claim to the contracting officer for payment of the disallowed cost and explain why the cost should be reimbursed; or

(ii) If the disagreement(s) cannot be settled, file a claim under the disputes clause which will be processed in accordance with disputes procedures found at FAR Subpart 33.2; and

(3) Process the voucher or invoice for payment and advise the NRC Division of Accounting and Finance to deduct the disallowed costs when scheduling the voucher for payment.

(b) When audit reports or other notifications question costs or consider them unallowable, the contracting officer shall resolve all cost issues through discussions with the contractor and/or auditor, whenever possible, within six months of receipt of the audit report.

(1) One of the following courses of action must be pursued:

(i) Accept and implement audit recommendations as submitted;

(ii) Accept the principle of the audit recommendation but adjust the amount of the questioned costs;

(iii) Reject audit findings and recommendations.

(2) When implementing the chosen course of action, the contracting officer shall:

(i) Hold discussions with the auditor and contractor, as appropriate;

(ii) If the contracting officer agrees with the auditor concerning the questioned costs, attempt to negotiate a mutual settlement of questioned costs;

(iii) Issue a final decision, including any disallowance of questioned costs; inform the contractor of his/her right to appeal the decision under the disputes procedures found at FAR Subpart 33.2; and provide a copy of the final decision to the Office of the Inspector General; and

(iv) Initiate immediate recoupment actions for all disallowed costs owed the Government by one or more of the following methods:

(A) Request that the contractor provide a credit adjustment (offset) and an adequate description/explanation of the adjustment against amounts billed the Government on the next or other future invoice(s) submitted under the contract for which the disallowed costs apply;

(B) Deduct the disallowed costs from the next invoice submitted under the contract;

(C) Deduct the disallowed costs on a schedule determined by the contracting officer after discussion with the contractor (if the contracting officer determines that an immediate and complete deduction is inappropriate); and

(D) Advise the contractor that a refund is immediately payable to the Government (in situations where there are insufficient payments owed by the Government to effect recovery from the contract).

Part 2045—GOVERNMENT PROPERTY

Subpart 2045.3—Providing Government Property to Contractors

Sec.

2045.370 Providing government property (in general).

2045.371 Property accountability procedures.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2045.3—Providing Government Property to Contractors

2045.370 Providing Government property (in general).

(a) Unless otherwise provided for in FAR 45.302-1(d), applicable to Government facilities with a unit cost of less than \$10,000, a contractor may be provided Government property or allowed to purchase the property at Government expense upon determination made by the contracting officer with the advice of the agency property official that:

(1) No practicable or economical alternative exists; e.g., acquisition from

other sources, utilization of subcontractors, rental of property, or modification of program project requirements;

(2) Furnishing Government property is likely to result in substantially lower costs to the Government for the items produced or services rendered when all costs involved (e.g., transportation, installation, modification, maintenance, etc.) are compared with the costs to the Government of the contractor's use of privately-owned property; and

(3) The Government receives adequate consideration for providing the property.

2045.371 Property accountability procedures.

(a) The threshold for detailed reporting of capitalized equipment by contractors is \$50,000.

(b) The contractor shall send a copy of each Financial Status Report (NRCAR 2052.211-72, and 2052.211-72 Alternate 1) to the Chief, Property and Acquisition Oversight Branch, Division of Contracts and Property Management, which references the acquisition of, or change in status of, contractor-held property purchased with government funds valued at the time of purchase at \$50,000 or more.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2052.2—Text of Provisions and Clauses

Sec.

2052.200 Authority.

2052.204-70 Security.

2052.204-71 Site access badge requirements.

2052.209-70 Current/former agency employee involvement.

2052.209-71 Contractor organizational conflicts of interest (representation).

2052.209-72 Contractor organizational conflicts of interest.

2052.211-70 Preparation of technical reports.

2052.211-71 Technical progress report.

2052.211-72 Financial status report.

2052.214-70 Prebid conference.

2052.214-71 Bidder qualifications and past experience.

2052.214-72 Bid evaluation.

2052.214-73 Timely receipt of bids.

2052.214-74 Disposition of bids.

2052.215-70 Key personnel.

2052.215-71 Project officer authority.

2052.215-72 Timely receipt of proposals.

2052.215-73 Award notification and commitment of public funds.

2052.215-74 Disposition of proposals.

2052.215-75 Proposal presentation and format.

2052.215-76 Preproposal conference.

- 2052.215-77 Travel approvals and reimbursement.
- 2052.215-78 Travel approvals and reimbursement—Alternate 1.
- 2052.215-79 Contract award and evaluation of proposals.
- 2052.216-70 Level of effort.
- 2052.216-71 Indirect cost rates.
- 2052.216-72 Task order procedures.
- 2052.216-73 Accelerated task order procedures.
- 2052.222-70 Nondiscrimination because of age.
- 2052.227-70 Drawings, designs, specifications, and other data.
- 2052.231-70 Precontract costs.
- 2052.235-70 Publication of research results.
- 2052.235-71 Safety, health, and fire protection.
- 2052.242-70 Resolving NRC differing professional views.
- 2052.242-71 Procedures for resolving NRC differing professional views.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2052.2—Text of Provisions and Clauses

2052.200 Authority.

2052.204-70 Security.

As prescribed at 2004.404(a), the contracting officer shall insert the following clause in solicitations and contracts during which the contractor may have access to, or contact with classified information, including National Security information, restricted data, formerly restricted data, and other classified data:

Security (Date)

(a) Security/Classification Requirements Form. The attached NRC Form 187 (See List of Attachments) furnishes the basis for providing security and classification requirements to prime contractors, subcontractors, or others (e.g., bidders) who have or may have an NRC contractual relationship that requires access to classified information or matter, access on a continuing basis (in excess of 90 or more days) to NRC Headquarters controlled buildings, or otherwise requires NRC photo identification or card-key badges.

(b) It is the contractor's duty to safeguard National Security Information, Restricted Data, and Formerly Restricted Data. The contractor shall, in accordance with the Commission's security regulations and requirements, be responsible for safeguarding National Security Information, Restricted Data, and Formerly Restricted Data, and for protecting against sabotage, espionage, loss, and theft, the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to the Commission any classified matter in the possession of the contractor or any person under the contractor's control in connection

with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract and the retention is approved by the contracting officer, the contractor shall complete a certificate of possession to be furnished to the Commission specifying the classified matter to be retained. The certification must identify the items and types or categories of matter retained, the conditions governing the retention of the matter and their period of retention, if known. If the retention is approved by the contracting officer, the security provisions of the contract continue to be applicable to the matter retained.

(c) In connection with the performance of the work under this contract, the contractor may be furnished, or may develop or acquire, proprietary data (trade secrets) or confidential or privileged technical, business, or financial information, including Commission plans, policies, reports, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93-579), or other information which has not been released to the public or has been determined by the Commission to be otherwise exempt from disclosure to the public. The contractor agrees to hold the information in confidence and not to directly or indirectly duplicate, disseminate, or disclose the information in whole or in part to any other person or organization except as may be necessary to perform the work under this contract. The contractor agrees to return the information to the Commission or otherwise dispose of it at the direction of the contracting officer. Failure to comply with this clause is grounds for termination of this contract.

(d) Regulations. The contractor agrees to conform to all security regulations and requirements of the Commission which are subject to change as directed by the NRC Division of Facilities and Security and the Contracting Officer. These changes will be under the authority of the FAR Changes clause referenced in Section I of this document.

(e) Definition of National Security Information. The term National Security Information, as used in this clause, means information that has been determined pursuant to Executive Order 12958 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

(f) Definition of Restricted Data. The term Restricted Data, as used in this clause, means all data concerning design, manufacture, or utilization of atomic weapons; the production of special nuclear material; or the use of special nuclear material in the production of energy, but does not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

(g) Definition of Formerly Restricted Data. The term Formerly Restricted Data, as used in this clause, means all data removed from the Restricted Data category under Section 142-d of the Atomic Energy Act of 1954, as amended.

(h) Security clearance personnel. The contractor may not permit any individual to

have access to Restricted Data, Formerly Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations or requirements applicable to the particular type or category of classified information to which access is required. The contractor shall also execute a Standard Form 312, Classified Information Nondisclosure Agreement, when access to classified information is required.

(i) Criminal liabilities. It is understood that disclosure of National Security Information, Restricted Data, and Formerly Restricted Data relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any Restricted Data, Formerly Restricted Data, or any other classified matter that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*; 18 U.S.C. 793 and 794; and Executive Order 12958.)

(j) Subcontracts and purchase orders. Except as otherwise authorized in writing by the contracting officer, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

(k) In performing the contract work, the contractor shall classify all documents, material, and equipment originated or generated by the contractor in accordance with guidance issued by the Commission. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, and equipment must provide that the subcontractor or supplier assign classification to all documents, material, and equipment in accordance with guidance furnished by the contractor.

(End of Clause)

2052.204-71 Site access badge requirements.

As prescribed at 2004.404(b), the contracting officer shall insert the following clause in all solicitations and contracts under which the contractor will require access to Government facilities. The clause may be altered to reflect any special conditions to be applied to foreign nationals:

Site Access Badge Requirements (Jan 1993)

During the life of this contract, the rights of ingress and egress for contractor personnel must be made available as required. In this regard, all contractor personnel whose duties under this contract require their presence on-site shall be clearly identifiable by a distinctive badge furnished by the Government. The Project Officer shall assist the contractor in obtaining the badges for the contractor personnel. It is the sole responsibility of the contractor to ensure that each employee has proper identification at all times. All prescribed identification must

be immediately delivered to the Security Office for cancellation or disposition upon the termination of employment of any contractor personnel. Contractor personnel must have this identification in their possession during on-site performance under this contract. It is the contractor's duty to assure that contractor personnel enter only those work areas necessary for performance of contract work, and to assure the safeguarding of any Government records or data that contractor personnel may come into contact with.

(End of Clause)

2052.209-70 Current/former agency employee involvement.

As prescribed at 2009.105-70, the contracting officer shall insert the following provision in all solicitations:

Current/Former Agency Employee Involvement (Date)

(a) The following representation is required by the NRC Acquisition Regulation 2009.105-70(b). It is not NRC policy to encourage offerors and contractors to propose current/former agency employees to perform work under NRC contracts and as set forth in the above cited provision, the use of such employees may, under certain conditions, adversely affect NRC's consideration of non-competitive proposals and task orders.

(b) There () are () are no current/former NRC employees (including special Government employees performing services as experts, advisors, consultants, or members of advisory committees) who have been or will be involved, directly or indirectly, in developing the offer, or in negotiating on behalf of the offeror, or in managing, administering, or performing any contract, consultant agreement, or subcontract resulting from this offer. For each individual so identified, the Technical and Management proposal must contain, as a separate attachment, the name of the individual, the individual's title while employed by the NRC, the date individual left NRC, and brief description of the individual's role under this proposal.

(End of Provision)

2052.209-71 Contractor organizational conflicts of interest (representation).

As prescribed in 2009.570-4(b) and 2009.570-8, the contracting officer must insert the following provision in applicable solicitations and in contracts resulting from unsolicited proposals. The contracting officer must also include the following in task orders and contract modifications for new work.

Contractor Organizational Conflicts of Interest Representation (Date)

I represent to the best of my knowledge and belief that:

The award to _____ of a contract or the modification of an existing contract does / / does not / / involve situations or relationships of the type set forth in 48 CFR 2009.570-3(b).

(a) If the representation, as completed, indicates that situations or relationships of

the type set forth in 48 CFR 2009.570-3(b) are involved, or the contracting officer otherwise determines that potential organizational conflicts of interest exist, the offeror shall provide a statement in writing which describes in a concise manner all relevant factors bearing on his representation to the contracting officer. If the contracting officer determines that organizational conflicts exist, the following actions may be taken:

(1) Impose appropriate conditions which avoid such conflicts,

(2) Disqualify the offeror, or

(3) Determine that it is otherwise in the best interest of the United States to seek award of the contract under the waiver provisions of 48 CFR 2009-570-9.

(b) The refusal to provide the representation required by 48 CFR 2009.570-4(b), or upon request of the contracting officer, the facts required by 48 CFR 2009.570-3(b), must result in disqualification of the offeror for award.

(End of Provision)

2052.209-72 Contractor organizational conflicts of interest.

As prescribed at 2009.570-5(a) and 2009.570-8, the contracting officer must insert the following clause in all applicable solicitations, contracts, and simplified acquisitions of the types described in 2009.570-4(b):

Contractor Organizational Conflicts of Interest (Jan 1993)

(a) Purpose. The primary purpose of this clause is to aid in ensuring that the contractor:

(1) Is not placed in a conflicting role because of current or planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract; and

(2) Does not obtain an unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described apply to performance or participation by the contractor, as defined in 48 CFR 2009.570-2 in the activities covered by this clause.

(c) Work for others.

(1) Notwithstanding any other provision of this contract, during the term of this contract the contractor agrees to forego entering into consulting or other contractual arrangements with any firm or organization, the result of which may give rise to a conflict of interest with respect to the work being performed under this contract. The contractor shall ensure that all employees under this contract abide by the provision of this clause. If the contractor has reason to believe with respect to itself or any employee that any proposed consultant or other contractual arrangement with any firm or organization may involve a potential conflict of interest, the contractor shall obtain the written approval of the contracting officer before the execution of such contractual arrangement.

(2) The contractor may not represent, assist, or otherwise support an NRC licensee or applicant undergoing an NRC audit, inspection, or review where the activities

that are the subject of the audit, inspection or review are the same as or substantially similar to the services within the scope of this contract (or task order as appropriate), except where the NRC licensee or applicant requires the contractor's support to explain or defend the contractor's prior work for the utility or other entity which NRC questions.

(3) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site, the contractor shall neither solicit nor perform work in the same or similar technical area for that licensee or applicant organization for a period commencing with the award of the task order or beginning of work on the site (if not a task order contract) and ending one year after completion of all work under the associated task order, or last time at the site (if not a task order contract).

(4) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site,

(i) The contractor may not solicit work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate.

(ii) The contractor may not perform work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate, and for one year thereafter.

(iii) Notwithstanding the foregoing, the contracting officer may authorize the contractor to solicit or perform this type of work (except work in the same or similar technical area) if the contracting officer determines that the situation will not pose a potential for technical bias or unfair competitive advantage.

(d) Disclosure after award.

(1) The contractor warrants that to the best of its knowledge and belief, and except as otherwise set forth in this contract, that it does not have any organizational conflicts of interest as defined in 48 CFR 2009.570-2.

(2) The contractor agrees that, if after award, it discovers organizational conflicts of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the contracting officer. This statement must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. The NRC may, however, terminate the contract if termination is in the best interest of the Government.

(3) It is recognized that the scope of work of a task-order-type contract necessarily encompasses a broad spectrum of activities. Consequently, if this is a task-order-type contract, the contractor agrees that it will disclose all proposed new work involving NRC licensees or applicants which comes within the scope of work of the underlying contract. Further, if this contract involves work at a licensee or applicant site, the contractor agrees to exercise diligence to discover and disclose any new work at that licensee or applicant site. This disclosure must be made before the submission of a bid or proposal to the utility or other regulated entity and must be received by the NRC at least 15 days before the proposed award date in any event, unless a written justification demonstrating urgency and due diligence to

discover and disclose is provided by the contractor and approved by the contracting officer. The disclosure must include the statement of work, the dollar value of the proposed contract, and any other documents that are needed to fully describe the proposed work for the regulated utility or other regulated entity. NRC may deny approval of the disclosed work only when the NRC has issued a task order which includes the technical area and, if site-specific, the site, or has plans to issue a task order which includes the technical area and, if site-specific, the site, or when the work violates paragraphs (c)(2), (c)(3) or (c)(4) of this clause.

(e) Access to and use of information.

(1) If in the performance of this contract, the contractor obtains access to information, such as NRC plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. Section 552a (1988)), or the Freedom of Information Act (5 U.S.C. Section 552 (1986)), the contractor agrees not to:

(i) Use this information for any private purpose until the information has been released to the public;

(ii) Compete for work for the Commission based on the information for a period of six months after either the completion of this contract or the release of the information to the public, whichever is first;

(iii) Submit an unsolicited proposal to the Government based on the information until one year after the release of the information to the public; or

(iv) Release the information without prior written approval by the contracting officer unless the information has previously been released to the public by the NRC.

(2) In addition, the contractor 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. Section 552a (1988)), or the Freedom of Information Act (5 U.S.C. Section 552 (1986)), or other confidential or privileged technical, business, or financial information under this contract, the contractor shall treat the information in accordance with restrictions placed on use of the information.

(3) Subject to patent and security provisions of this contract, the contractor shall have the right to use technical data it produces under this contract for private purposes provided that all requirements of this contract have been met.

(f) Subcontracts. Except as provided in 48 CFR 209.570-2, the contractor shall include this clause, including this paragraph, in subcontracts of any tier. The terms *contract*, *contractor*, and *contracting officer*, must be appropriately modified to preserve the Government's rights.

(g) Remedies. For breach of any of the above restrictions, or for intentional nondisclosure or misrepresentation of any relevant interest required to be disclosed concerning this contract or for such erroneous representations that necessarily imply bad faith, the Government may terminate the contract for default, disqualify the contractor from subsequent contractual efforts, and pursue other remedies permitted by law or this contract.

(h) Waiver. A request for waiver under this clause must be directed in writing to the contracting officer in accordance with the procedures outlined in 48 CFR 209.570-9.

(i) Follow-on effort. The contractor shall be ineligible to participate in NRC contracts, subcontracts, or proposals therefor (solicited or unsolicited), which stem directly from the contractor's performance of work under this contract. Furthermore, unless so directed in writing by the contracting officer, the contractor may not perform any technical consulting or management support services work or evaluation activities under this contract on any of its products or services or the products or services of another firm if the contractor has been substantially involved in the development or marketing of the products or services.

(1) If the contractor, under this contract, prepares a complete or essentially complete statement of work or specifications, the contractor is not eligible to perform or participate in the initial contractual effort which is based on the statement of work or specifications. The contractor may not incorporate its products or services in the statement of work or specifications unless so directed in writing by the contracting officer, in which case the restrictions in this paragraph do not apply.

(2) Nothing in this paragraph precludes the contractor from offering or selling its standard commercial items to the Government.

(End of Clause)

2052.211-70 Preparation of technical reports.

As prescribed at 2011.104-70(a) the contracting officer shall insert the following clause in solicitations and contracts when deliverables include a technical report. The contracting officer may alter this clause prior to issuance of the solicitation or during competition by solicitation amendment. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiation, without solicitation amendment.

Preparation of Technical Reports (Jan 1993)

All technical reports required by Section C and all Technical Progress Reports required by Section F are to be prepared in accordance with the attached Management Directive 3.8, "Unclassified Contractor and Grantee Publications in the NUREG Series." Management Directive 3.8 is not applicable to any Contractor Spending Plan (CSP) and any Financial Status Report that may be included in this contract. (See List of Attachments).

(End of Clause)

2052.211-71 Technical progress report.

As prescribed at 2011.104-70(b), the contracting officer shall insert the following clause in all solicitations and contracts except firm fixed price or indefinite delivery contracts to be awarded on a time-and-materials or labor-hour basis, or which provide for

issuance of delivery orders for specific products/serviced line items. The contracting officer may alter this clause prior to issuance of the solicitation or during competition by solicitation amendment. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiation, without solicitation amendment.

Technical Progress Report (Jan 1993)

The contractor shall provide a monthly Technical Progress Report to the project officer and the contracting officer. The report is due within 15 calendar days after the end of the report period and must identify the title of the project, the contract number, appropriate financial tracking code specified by the NRC Project Officer, project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following for each discrete task/task order:

(a) A listing of the efforts completed during the period, and milestones reached or, if missed, an explanation provided;

(b) Any problems or delays encountered or anticipated and recommendations for resolution. If the recommended resolution involves a contract modification, e.g., change in work requirements, level of effort (cost) or schedule delay, the contractor shall submit a separate letter to the contracting officer identifying the required change and estimated cost impact.

(c) A summary of progress to date; and

(d) Plans for the next reporting period.

(End of Clause)

2052.211-72 Financial status report.

As prescribed at 2011.104-70(c), the contracting officer shall insert the following clause in applicable cost reimbursement solicitations and contracts when a detailed assessment of costs is warranted and a contractor spending plan is required. The contracting officer may alter this clause and Alternate 1 of this clause prior to issuance of the solicitation or during competition by solicitation amendment. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiation, without solicitation amendment.

Financial Status Report (Date)

The contractor shall provide a monthly Financial Status Report (FSR) to the project officer and the contracting officer. The FSR shall include the acquisition of, or changes in the status of, contractor-held property acquired with government funds valued at the time of purchase at \$50,000 or more. Whenever such property changes occur, the contractor shall send a copy of the report to the Chief, Property and Acquisition Oversight Branch, Office of Administration. The report is due within 15 calendar days after the end of the report period and must identify the title of the project, the contract

number, the appropriate financial tracking code (e.g., Job Code Number or JCN) specified by the NRC Project Officer, project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following for each discrete task:

- (a) Total estimated contract amount.
- (b) Total funds obligated to date.
- (c) Total costs incurred this reporting period.
- (d) Total costs incurred to date.
- (e) Detail of all direct and indirect costs incurred during the reporting period for the entire contract or each task, if it is a task ordering contract.
- (f) Balance of obligations remaining.
- (g) Balance of funds required to complete contract/task order.

(h) Contractor Spending Plan (CSP) status: A revised CSP is required with the Financial Status Report whenever the contractor or the contracting officer has reason to believe that the total cost for performance of this contract will be either greater or substantially less than what had been previously estimated.

(1) Projected percentage of completion cumulative through the report period for the project/task order as reflected in the current CSP.

(2) Indicate significant changes in the original CSP projection in either dollars or percentage of completion. Identify the change, the reasons for the change, whether there is any projected overrun, and when additional funds would be required. If there have been no changes to the original NRC-approved CSP projections, a written statement to that effect is sufficient in lieu of submitting a detailed response to item "h".

(i) Property status:

(1) List property acquired for the project during the month with an acquisition cost between \$500 and \$49,999. Give the item number for the specific piece of equipment.

(2) Provide a separate list of property acquired for the project during the month with an acquisition cost of \$50,000 or more. Provide the following information for each item of property: item description or nomenclature, manufacturer, model number, serial number, acquisition cost, and receipt date. If no property was acquired during the month, include a statement to that effect. Note: The same information shall be provided for any component or peripheral equipment which is part of a "system or system unit."

(3) For multi-year projects, in the September monthly financial status report provide a cumulative listing of property with an acquisition cost of \$50,000 or more showing the above information.

(4) In the final financial status report provide a closeout property report containing the same elements as described above for the monthly financial status reports, for all property purchased with NRC funds regardless of value unless title has been vested in the contractor. If no property was acquired under the contract, provide a statement to that effect. The report should note any property requiring special handling for security, health, safety, or other reasons as part of the report.

(j) Travel status: List the starting and ending dates for each trip, the starting point

and destination, and the traveler(s) for each trip.

(k) If the data in this report indicates a need for additional funding beyond that already obligated, this information may only be used as support to the official request for funding required in accordance with the Limitation of Cost (LOC) Clause (FAR 52.232-20) or the Limitation of Funds (LOF) Clause FAR 52.232-22.

(End of Clause)

Alternate 1 (Date)

As prescribed in 2011.104-70(c), the contracting officer shall insert the following clause in applicable cost reimbursement solicitations and contracts when no contractor spending plan is required:

Financial Status Report—Alternate 1 (Date)

The contractor shall provide a monthly Financial Status Report (FSR) to the Project Officer and the contracting officer. The FSR shall include the acquisition of, or changes in the status of, contractor-held property acquired with government funds valued at the time of purchase at \$50,000 or more. Whenever such changes occur, the contractor shall send a copy of the report to the Chief, Property and Acquisition Oversight Branch, Office of Administration. The report is due within 15 calendar days after the end of the report period and shall identify the title of the project, the contract number, project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report shall include the following for each discrete task:

- (a) Total estimated contract amount.
- (b) Total funds obligated to date.
- (c) Total costs incurred this reporting period.
- (d) Total costs incurred to date.
- (e) Detail of all direct and indirect costs incurred during the reporting period for the entire contract or each task, if it is a task ordering contract.
- (f) Balance of obligations remaining.
- (g) Balance of funds required to complete contract/task order.

(h) [Reserved]

(i) Property status:

(1) List property acquired for the project during the month with an acquisition cost between \$500 and \$49,999. Give the item number for the specific piece of equipment.

(2) Provide a separate list of property acquired for the project during the month with an acquisition cost of \$50,000 or more. Provide the following information for each item of property: item description or nomenclature, manufacturer, model number, serial number, acquisition cost, and receipt date. If no property was acquired during the month, include a statement to that effect. Note: The same information shall be provided for any component or peripheral equipment which is part of a "system or system unit."

(3) For multi-year projects, in the September monthly financial status report provide a cumulative listing of property with an acquisition cost of \$50,000 or more showing the above information.

(4) In the final financial status report provide a closeout property report containing

the same elements as described above for the monthly financial status reports, for all property purchased with NRC funds regardless of value unless title has been vested in the contractor. If no property was acquired under the contract, provide a statement to that effect. The report should note any property requiring special handling for security, health, safety, or other reasons as part of the report.

(j) Travel status: List the starting and ending dates for each trip, the starting point and destination, and the traveler(s) for each trip.

(k) If the data in this report indicates a need for additional funding beyond that already obligated, this information may only be used as support to the official request for funding required in accordance with the Limitation of Cost (LOC) Clause (FAR 52.232-20) or the Limitation of Funds (LOF) Clause FAR 52.232-22.

(End of Clause)

2052.214-70 Prebid conference.

As prescribed at 2014.201-670(a), the contracting officer may insert the following provision in invitations for bids which require a prebid conference:

Prebid Conference (Jan 1993)

(a) A prebid conference is scheduled for:

Date: *

Location: *

Time: *

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than * working day(s) prior to the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notify * by letter or telephone *, no later than close of business *. Notification of your intention to attend is essential in the event the conference is rescheduled or canceled. (Optional statement: Due to space limitations, each potential bidder is limited to * representatives at the conference.)

(c) Written questions must be submitted to: U.S. Nuclear Regulatory Commission, Division of Contracts and Property Management, ATTN: *, Mail Stop T-7-I-2, Washington, DC 20555.

(d) The envelope must be marked "Solicitation No. */Prebid Conference."

(e) A transcript of the conference will be furnished to all prospective bidders through the issuance of an amendment to the solicitation.

* To be incorporated into the solicitation.

(End of Provision)

2052.214-71 Bidder qualifications and past experiences.

As prescribed in 2014.201-670(b), the contracting officer may insert the

following provision on an optional basis to fit the circumstances of the invitation for bid.

Bidder Qualifications and Past Experience (Date)

(a) The bidder shall list previous/current contracts performed within the past * years (with no omissions) in which the Bidder was the prime or principal subcontractor. This information will assist the contracting officer in his/her Determination of Responsibility. Lack of previous/current contracts or failure to submit this information will not necessarily result in an unfavorable Determination of Responsibility.

(b) The following information shall be provided for each previous/current contract listed:

- (1) Contract No.:
- (2) Contract performance dates:
- (3) Estimated total value of the contract (base plus all option years):
- (4) Brief description of work performed under the contract:
- (5) Contract Standard Industrial Code:
- (6) Name and address of Government agency or commercial entity:
- (7) Technical Point of Contact and current telephone number:
- (8) Contracting Officer name and current telephone number:

(c) The bidder shall also provide the name, title and full telephone number of its technical representative and contracts/business representative:

- (1) Technical Representative name:
Title:
Telephone No. ()
- (2) Contracts/Business Representative name:
Title:
Telephone No. ()

*To be incorporated into the solicitation.

(End of Provision)

2052.214-72 Bid evaluation.

As prescribed at 2014.201-670(c), the contracting officer shall insert the following provision in applicable invitations for bids (paragraph "(f)" of this provision is optional):

Bid Evaluation (Jan 1993)

(a) Award will be made to that responsive, responsible bidder within the meaning of FAR Subpart 9.1 whose total bid amount, as set forth by the bidder in Section B of this Invitation for Bid (IFB), constitutes the lowest overall evaluated final contract price to the Government based upon the requirements as set forth in the schedule. Bids will be evaluated for purposes of award by first ascertaining the sum of the total amount for each of the items specified in Section B of this solicitation. This will constitute the bidder's "Total Bid Amount."

(b) Bidders shall insert a definite price or indicate "no charge" in the blank space provided for each item and/or sub-item listed in Section B. Unless expressly provided for herein, no additional charge will be allowed for work performed under the contract other than the unit prices stipulated for each such item and/or sub-item.

(c) Any bid which is materially unbalanced as to price for the separate items specified in

Section B of this IFB may be rejected as nonresponsive. An unbalanced bid is defined as one which is based on prices which, in the opinion of the NRC, are significantly less than cost for some work and/or prices that may be significantly overstated for other work.

(d) Separation charges, in any form, are not solicited. Bids containing charges for discontinuance, termination, failure to exercise an option, or for any other purpose will cause the bid to be rejected as nonresponsive.

(e) A preaward on-site survey of the bidder's facilities, equipment, etc., in accordance with FAR 9.105 and 9.106 may be made by representatives of the Commission for the purpose of determining whether the bidder is responsible within the meaning of FAR 9.1, and whether the bidder possesses qualifications that are conducive to the production of work that will meet the requirements, specifications, and provisions of this contract. Also, if requested by the Commission, the prospective contractor may be required to submit statements within * hours after receiving the request:

- (1) Concerning their ability to meet any of the minimum standards set forth in FAR 9.104,
- (2) Samples of work, and
- (3) Names and addresses of additional clients, Government agencies and/or commercial firms which the bidder is now doing or had done business with.

(f) Notwithstanding paragraph (b) of this provision, the award of any contract resulting from this solicitation will be made on an "all or none" basis. Thus, bids submitted on fewer than the items listed in Section B of this IFB, or on fewer than the estimated quantity, will cause the bid to be rejected as nonresponsive.

*To be inserted into solicitation.

(End of Provision)

2052.214-73 Timely receipt of bids.

As prescribed at § 2014.670(b), the contracting officer shall insert the following provision in all invitations for bids:

Timely Receipt of Bids (Date)

Sealed offers for furnishing the services or supplies in the schedule are due at the date and time stated in block 9 of Standard Form 33, Solicitation, Offer and Award. Offers sent through the U.S. Mail (including U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee) must be addressed to the place specified in the solicitation. All hand-carried offers including those made by private delivery services (e.g., Federal Express and Airborne Express) must be delivered to the NRC loading dock security station located at 11545 Rockville Pike, Rockville, Maryland 20852 and received in the depository located in Room T-7-I-2. All offerors should allow extra time for internal mail distribution or for pick up of hand-carried deliveries. NRC is a secure facility with perimeter access-control and NRC personnel are only available to receive hand-carried offers during normal working hours, 7:30 a.m.–3:30 p.m., Monday through Friday, excluding federal holidays.

(End of Provision)

2052.214-74 Disposition of bids.

As prescribed at 2014.670(b), the contracting officer shall insert the following provision in applicable invitation for bids:

Disposition of Bids (Jan 1993)

After award of the contract, one copy of each unsuccessful bid will be retained by NRC's Division of Contracts and Property Management in accordance with the General Records Schedule 3(5)(b). Unless return of the additional copies of the bid is requested by the bidder upon submission of the bid, all other copies will be destroyed. This request should appear in a cover letter accompanying the bid.

(End of Provision)

2052.215-70 Key personnel.

As prescribed at 2015.209-70(a)(1), the contracting officer shall insert in solicitations and contracts the following clause as applicable to the requirement:

Key Personnel (Jan 1993)

(a) The following individuals are considered to be essential to the successful performance of the work hereunder: *

The contractor agrees that personnel may not be removed from the contract work or replaced without compliance with paragraphs (b) and (c) of this clause.

(b) If one or more of the key personnel, for whatever reason, becomes, or is expected to become, unavailable for work under this contract for a continuous period exceeding 30 work days, or is expected to devote substantially less effort to the work than indicated in the proposal or initially anticipated, the contractor shall immediately notify the contracting officer and shall, subject to the concurrence of the contracting officer, promptly replace the personnel with personnel of at least substantially equal ability and qualifications.

(c) Each request for approval of substitutions must be in writing and contain a detailed explanation of the circumstances necessitating the proposed substitutions. The request must also contain a complete resume for the proposed substitute and other information requested or needed by the contracting officer to evaluate the proposed substitution. The contracting officer and the project officer shall evaluate the contractor's request and the contracting officer shall promptly notify the contractor of his or her decision in writing.

(d) If the contracting officer determines that suitable and timely replacement of key personnel who have been reassigned, terminated, or have otherwise become unavailable for the contract work is not reasonably forthcoming, or that the resultant reduction of productive effort would be so substantial as to impair the successful completion of the contract or the service order, the contract may be terminated by the contracting officer for default or for the convenience of the Government, as appropriate. If the contracting officer finds the contractor at fault for the condition, the

contract price or fixed fee may be equitably adjusted downward to compensate the Government for any resultant delay, loss, or damage.

(End of Clause)

*To be incorporated into any resultant contract.

2052.215-71 Project officer authority.

As prescribed in 2015.209-70(a)(2)(i), the contracting officer shall insert the following clause in applicable solicitations and contracts for cost-reimbursement, cost-plus-fixed-fee, cost-plus-award-fee, cost sharing, labor-hour or time-and-materials, including task order contracts. This clause and the following alternate clauses are intended for experienced, trained projects officers, and may be altered to delete duties where appropriate:

Project Officer Authority (Date)

(a) The contracting officer's authorized representative hereinafter referred to as the project officer for this contract is:

Name: *

Address: *

Telephone Number: *

(b) Performance of the work under this contract is subject to the technical direction of the NRC project officer. The term *technical direction* is defined to include the following:

(1) Technical direction to the contractor which shifts work emphasis between areas of work or tasks, authorizes travel which was unanticipated in the Schedule (i.e., travel not contemplated in the Statement of Work or changes to specific travel identified in the Statement of Work), fills in details, or otherwise serves to accomplish the contractual statement of work.

(2) Provide advice and guidance to the contractor in the preparation of drawings, specifications, or technical portions of the work description.

(3) Review and, where required by the contract, approval of technical reports, drawings, specifications, and technical information to be delivered by the contractor to the Government under the contract.

(c) Technical direction must be within the general statement of work stated in the contract. The project officer does not have the authority to and may not issue any technical direction which:

(1) Constitutes an assignment of work outside the general scope of the contract.

(2) Constitutes a change as defined in the "Changes" clause of this contract.

(3) In any way causes an increase or decrease in the total estimated contract cost, the fixed fee, if any, or the time required for contract performance.

(4) Changes any of the expressed terms, conditions, or specifications of the contract.

(5) Terminates the contract, settles any claim or dispute arising under the contract, or issues any unilateral directive whatever.

(d) All technical directions must be issued in writing by the project officer or must be confirmed by the project officer in writing within ten (10) working days after verbal issuance. A copy of the written direction must be furnished to the contracting officer.

A copy of NRC Form 445, Request for Approval of Official Foreign Travel, which has received final approval from the NRC must be furnished to the contracting officer.

(e) The contractor shall proceed promptly with the performance of technical directions duly issued by the project officer in the manner prescribed by this clause and within the project officer's authority under the provisions of this clause.

(f) If, in the opinion of the contractor, any instruction or direction issued by the project officer is within one of the categories as defined in paragraph (c) of this clause, the contractor may not proceed but shall notify the contracting officer in writing within five (5) working days after the receipt of any instruction or direction and shall request the contracting officer to modify the contract accordingly. Upon receiving the notification from the contractor, the contracting officer shall issue an appropriate contract modification or advise the contractor in writing that, in the contracting officer's opinion, the technical direction is within the scope of this article and does not constitute a change under the "Changes" clause.

(g) Any unauthorized commitment or direction issued by the project officer may result in an unnecessary delay in the contractor's performance and may even result in the contractor expending funds for unallowable costs under the contract.

(h) A failure of the parties to agree upon the nature of the instruction or direction or upon the contract action to be taken with respect thereto is subject to § 52.233-1—Disputes.

(i) In addition to providing technical direction as defined in paragraph (b) of this clause, the project officer shall:

(1) Monitor the contractor's technical progress, including surveillance and assessment of performance, and recommend to the contracting officer changes in requirements.

(2) Assist the contractor in the resolution of technical problems encountered during performance.

(3) Review all costs requested for reimbursement by the contractor and submit to the contracting officer recommendations for approval, disapproval, or suspension of payment for supplies and services required under this contract.

(End of Clause)

Alternate 1 (Date)

As prescribed at 2015.209-70(a)(2)(ii), the contracting officer shall insert the following clause in solicitations and contracts which require issuance of delivery orders for specific products/services.

Project Officer Authority—Alternate 1 (Date)

(a) The contracting officer's authorized representative, hereinafter referred to as the project officer, for this contract is:

Name: *

Address: *

Telephone Number: *

(b) The project officer shall:

(1) Place delivery orders for items required under this contract up to the amount obligated on the contract award document.

(2) Monitor contractor performance and recommend to the contracting officer changes in requirements.

(3) Inspect and accept products/services provided under the contract.

(4) Review all contractor invoices/vouchers requesting payment for products/services provided under the contract and make recommendations for approval, disapproval, or suspension.

(c) The project officer may not make changes to the express terms and conditions of this contract.

*To be incorporated into any resultant contract.

(End of Clause)

Alternate 2 (Date)

As prescribed at 2015.209(a)(2)(iii), the contracting officer shall insert in solicitations for firm fixed price contracts, the clause at 2052.215-71 Project Officer Authority Alternate 1 which shall be used with paragraph (b)(1) deleted and the remainder of the clause renumbered.

2052.215-72 Timely receipt of proposals.

As prescribed in 2015.209-70(a)(3), the contracting officer shall insert the following provision in all solicitations:

Timely Receipt of Proposals (Date)

Sealed offers for furnishing the services or supplies in the schedule are due at the date and time stated in block 9 of Standard Form 33, Solicitation, Offer and Award. Offers sent through the U.S. Mail (including U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee) must be addressed to the place specified in the solicitation. All hand-carried offers including those made by private delivery services (e.g., Federal Express and Airborne Express) must be delivered to the NRC loading dock security station located at 11545 Rockville Pike, Rockville, Maryland 20852 and received in the depository located in Room T-7-I-2. All offerors should allow extra time for internal mail distribution or for pick up of hand-carried deliveries. NRC is a secure facility with perimeter access-control and NRC personnel are only available to receive hand-carried offers during normal working hours, 7:30 AM—3:30 PM, Monday through Friday, excluding federal holidays.

(End of Provision)

2052.215-73 Award notification and commitment of public funds.

As prescribed at 2015.209-70 (a)(4), the contracting officer shall insert the following clause in applicable solicitations:

Award Notification and Commitment of Public Funds (Date)

(a) All offerors will be notified of their exclusion from the competitive range in accordance with FAR 15.503(a)(1). Pursuant to the requirements of FAR 15.503(a)(2), preliminary notification will be provided before award for small business set-aside procurements on negotiated procurements. The contracting officer shall provide written postaward notice to each unsuccessful offeror in accordance with FAR 15.503(b).

(b) It is also brought to your attention that the contracting officer is the only individual who can legally commit the NRC to the expenditure of public funds in connection with this procurement. This means that unless provided in a contract document or specifically authorized by the contracting officer, NRC technical personnel may not issue contract modifications, give informal contractual commitments, or otherwise bind, commit, or obligate the NRC contractually. Informal contractual commitments include:

- (1) Encouraging a potential contractor to incur costs prior to receiving a contract;
 - (2) Requesting or requiring a contractor to make changes under a contract without formal contract modifications;
 - (3) Encouraging a contractor to incur costs under a cost-reimbursable contract in excess of those costs contractually allowable; and
 - (4) Committing the Government to a course of action with regard to a potential contract, contract change, claim, or dispute.
- (End of Clause)

2052.215-74 Disposition of proposals.

As prescribed in 2015.209-70(a)(5), the contracting officer shall insert the following provision in all solicitations:

Disposition of Proposals (Jan 1993)

After award of the contract, one copy of each unsuccessful proposal is retained by the NRC's Division of Contracts and Property Management in accordance with the General Records Schedule 3(5)(b). Unless return of the additional copies of the proposals is requested by the offeror upon submission of the proposals, all other copies will be destroyed. This request should appear in a cover letter accompanying the proposal.

(End of Provision)

2052.215-75 Proposal presentation and format.

As prescribed at 2015.209-70(b)(1), the contracting officer may insert the following provision in applicable negotiated procurements for cost type solicitations. This clause may be tailored to each procurement and solicitation evaluation criteria by the contracting officer to fit the circumstances of the procurement.

Proposal Presentation and Format (Date)

(a) Information submitted in response to this solicitation must be typed, printed, or reproduced on letter-size paper and each copy must be legible. Offerors are hereby notified that all information provided including all resumes, must be accurate, truthful, and complete to the best of the offeror's knowledge and belief. The Commission will rely upon all representations made by the offeror both in the evaluation process and for the performance of the work by the offeror selected for award. The Commission may require the offeror to substantiate the credentials, education, and employment history of its employees, subcontractor personnel, and consultants, through submission of copies of transcripts, diplomas, licenses, etc.

(b) The offeror must submit the following material which will constitute its offer, as defined by FAR 2.101, in two separate and distinct parts at the date and time specified in * of the solicitation for receipt of sealed offers.

(1) Part 1—Solicitation Package/Offer. Two (2) original signed copies of this solicitation package/offer. All applicable sections must be completed by the offeror.

(2) Part 2—Cost Proposal. One (1) original and * copies of the "Cost Proposal."

(i) The cost proposal shall be submitted separately from the Technical and Management Proposal or Oral Presentation and Supporting Documentation (as applicable).

(ii) The offeror's request for an exception to submitting cost or pricing data shall be made in accordance with FAR 52.215-20(a).

(iii) If the contracting officer does not grant the offeror an exception from the requirement to submit cost or pricing data, the offeror's cost proposal shall conform with the requirements of FAR 52.215-20(b). Cost information shall include pertinent details sufficient to show the elements of cost upon which the total cost is predicted in accordance with the requirement of FAR 52.215-20(b)(1).

(iv) When the offeror's estimated cost for the proposed work exceeds \$100,000 and the duration of the contract period exceeds six months, the offeror shall submit a Contractor Spending Plan (CSP) as part of its cost proposal. Guidance for completing the CSP is attached.

(v) For any subcontract discussed under the Technical and Management Proposal, or Oral Presentation Material, provide supporting documentation on the selection process, i.e. competitive vs. noncompetitive, and the cost evaluation.

(c) "Written Technical and Management Proposal" or "Oral Presentation and Supporting Documentation" (as applicable). One (1) original and * copies.

(1) The written Technical and Management Proposal or Oral Presentation and Supporting Documentation may not contain any reference to cost. Resource information, such as data concerning labor hours and categories, materials, subcontracts, travel, computer time, etc., must be included so that the offeror's understanding of the scope of work may be evaluated.

(2) The offeror shall submit in the written Technical and Management Proposal or Oral Presentation and Supporting Documentation full and complete information as set forth below to permit the Government to make a thorough evaluation and a sound determination that the proposed approach will have a reasonable likelihood of meeting the requirements and objectives of this procurement.

(3) The written Technical Proposal or Oral Presentation and Supporting Documentation must be tailored to assure that all information reflects a one-to-one relationship to the evaluation criteria.

(4) Statements which paraphrase the statement of work without communicating the specific approach proposed by the offeror, or statements to the effect that the offeror's understanding can or will comply

with the statement of work may be construed as an indication of the offeror's lack of understanding of the statement of work and objectives.

(d) Written Technical or Oral Presentation and Supporting Documentation Requirements—Instructions. * To be incorporated into the solicitation (End of Provision)

Alternate 1 (Date)

As prescribed at 2015.209-70(b)(2), this Alternate 1 may be used for solicitations for negotiated task orders. Include the following paragraph in place of paragraph (b)(2)(iv) of the basic provision:

(b)(2)(iv) The offeror's cost proposal shall be based on the NRC's estimated level of effort. The NRC's estimated level of effort for this procurement is approximately * professional and * clerical staff-years for the duration of this contract. This information is advisory and is not to be considered as the sole basis for the development of the staffing plan. For the purposes of the Government estimate, 2000 hours constitute a staff year. The total estimated cost proposed by the offeror is used for evaluation purposes only. Any resultant contract, except a requirements contract, contains an overall cost ceiling whereby individual task orders may be issued. The cost and fee, if any, for each task order is individually negotiated and also contains a cost ceiling.

Alternate 2 (Date)

As proposed at 2015.209-70(b)(3), Alternate 2 may be used for solicitations for negotiated fixed price, labor hour, or time and materials contracts. Substitute the following paragraph (b)(2)(ii) for the paragraph (b)(2)(ii) of the basic provision, delete paragraphs (b)(2)(iii) through (iv) of the basic provision, and renumber the remaining paragraphs.

(b)(2)(ii) Submittal of information other than cost or pricing data shall be made in accordance with FAR 52.215-20 Alternate IV.

2052.215-76 Preproposal conference

As prescribed at 2015.407-70(c), the contracting officer may insert the following provision in applicable solicitations which include a preproposal conference:

Preproposal Conference (Jan 1993)

(a) A preproposal conference is scheduled for:

Date: *
Location: *
Time: *

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than * working day(s) prior to the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any

necessary amendment to the solicitation. If you plan to attend the conference, notify * by letter or telephone *, no later than close of business *. Notification of your intention to attend is essential in the event the conference is rescheduled or canceled. (Optional statement: Due to space limitations, each potential offeror is limited to * representatives at the conference.)

(c) Written questions must be submitted to: U.S. Nuclear Regulatory Commission, Division of Contracts and Property Management, ATTN: *, Mail Stop T-7-I-2, Washington, DC 20555.

(d) The envelope must be marked "Solicitation No. * /Preproposal Conference."

*To be incorporated into the solicitation.

(e) A transcript of the conference will be furnished to all prospective offerors through the issuance of an amendment to the solicitation.

(End of Provision)

2052.215-77 Travel approvals and reimbursement.

As prescribed at 2015.209-70(d), the contracting officer shall insert the following clause in cost reimbursement solicitations and contracts which require travel but do not set a specific ceiling amount on that travel. Note that requests for foreign travel must be submitted to the NRC 30 days in advance of the travel date.

Travel Approvals and Reimbursement (Date)

(a) All foreign travel must be approved in advance by the NRC on NRC Form 445, Request for Approval of Official Foreign Travel, and must be in compliance with FAR 52.247-63 Preference for U.S. Flag Air Carriers. The contractor shall submit NRC Form 445 to the NRC no later than 30 days prior to the commencement of travel.

(b) The contractor must receive written approval from the NRC Project Officer prior to taking travel which was unanticipated in the Schedule (i.e., travel not contemplated in the Statement of Work, or changes to specific travel identified in the Statement of Work).

(c) The contractor will be reimbursed only for those travel costs incurred which are directly related to this contract and which are allowable subject to the limitations prescribed in FAR 31.205-46.

(d) It is the responsibility of the contractor to notify the contracting officer in accordance with the Limitations of Cost clause of this contract when, at any time, the contractor learns that travel expenses will cause the contractor to exceed the estimated costs specified in the Schedule.

(e) Reasonable travel costs for research and related activities performed at State and nonprofit institutions, in accordance with Section 12 of Pub. L. 100-679, shall be charged in accordance with the contractor's institutional policy to the degree that the limitations of Office of Management and Budget (OMB) guidance are not exceeded. Applicable guidance documents include OMB Circular A-87, Cost Principles for State and Local Governments; OMB Circular A-122, Cost Principles for Nonprofit

Organizations; and OMB Circular A-21, Cost Principles for Educational Institutions.

(End of Clause)

2052.215-78 Travel approvals and reimbursement—Alternate 1.

As prescribed in 2015.209-70(d), the contracting officer shall insert the following clause in cost reimbursement solicitations and contracts which include a ceiling amount on travel. Note that requests for foreign travel must be submitted to the NRC 30 days in advance of the travel date.

Travel Approvals and Reimbursement—Alternate 1 (Date)

(a) Total expenditure for travel may not exceed ____*____ without the prior approval of the contracting officer.

(b) All foreign travel must be approved in advance by the NRC on NRC Form 445, Request for Approval of Official Foreign Travel, and must be in compliance with FAR 52.247-63 Preference for U.S. Flag Air Carriers. The contractor shall submit NRC Form 445 to the NRC no later than 30 days prior to the commencement of travel.

(c) The contractor will be reimbursed only for those travel costs incurred which are directly related to this contract and which are allowable subject to the limitations prescribed in FAR 31.205-46.

(d) It is the responsibility of the contractor to notify the contracting officer in accordance with the FAR Limitations of Cost clause of this contract when, at any time, the contractor learns that travel expenses will cause the contractor to exceed the travel ceiling amount identified in paragraph (a) of this clause.

(e) Reasonable travel costs for research and related activities performed at State and nonprofit institutions, in accordance with Section 12 of Pub. L. 100-679, shall be charged in accordance with the contractor's institutional policy to the degree that the limitations of Office of Management and Budget (OMB) guidance are not exceeded. Applicable guidance documents include OMB Circular A-87, Cost Principles for State and Local Governments; OMB Circular A-122, Cost Principles for Nonprofit Organizations; and OMB Circular A-21, Cost Principles for Educational Institutions.

*To be incorporated into any resultant contract.

(End of Clause)

2052.215-79 Contract award and evaluation of proposals.

As prescribed in 2015.209(a)(1), insert the following provision in solicitations when technical merit is more important than cost:

Contract Award and Evaluation of Proposals (Date)

(a) By use of narrative and numerical (as appropriate) scoring techniques, proposals are evaluated against the evaluation factors specified in paragraph * below. These factors are listed in their relative order of importance.

(b) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value, as defined in FAR 2.101, after evaluation in accordance with the factors and subfactors in the solicitation.

(c) The Government may:

(1) Reject any or all proposals if such action is in the Government's interest.

(2) Waive informalities and minor irregularities in proposals received.

(d) The Government intends to evaluate proposals and award a contract without discussions with offerors. The Government reserves the right to seek proposal clarifications (e.g., capability issues as described in FAR 15.306(a) or minor or clerical errors as described in FAR 14.407); and hold communications as described in FAR 15.306(b)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(e) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(f) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(g) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(h) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(i) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(j) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(k) A separate cost analysis is performed on each cost proposal. To provide a common base for evaluation of cost proposals, the level of effort data must be expressed in staff hours. Where a Contractor Spending Plan

(CSP) is required by other provisions of this solicitation, consideration is given to the Plan for completeness, reasonableness, and as a measure of effective management of the effort.

*To be incorporated into the solicitation.
(End of Provision)

Alternate 1 (Date)

As prescribed at 2015.209-70(e)(2), Alternate 1 may be used when proposals are to be evaluated on a lowest price, technically acceptable basis. Substitute the following paragraph for paragraph (b) in the clause at 2052.215-79:

(b) Although technical merit in the evaluation criteria set forth below is a factor in the evaluation of proposals, award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors,

Alternate 2 (Date)

As prescribed at 2015.209-70(e)(2), Alternate 2 may be used when cost and technical merit are of equal significance. Substitute the following paragraph for paragraph (b) in the clause at 2052.215-79:

(b) In the selection of a contractor, technical merit in the evaluation criteria set forth below and cost bear equal significance. To be selected for an award, the proposed cost must be realistic and reasonable.

2052.216-70 Level of effort.

As prescribed at 2016.307-70(a) the contracting officer shall insert the following provision in solicitations for negotiated procurements containing labor costs other than maintenance services, to be awarded on a cost reimbursement, cost sharing, cost-plus-award-fee, cost-plus-fixed-fee, time and materials, or labor hours basis.

Level of Effort (Jan 1993)

The NRC's estimate of the total effort for this project is approximately * professional and * clerical staff-years for the duration of this contract. This information is advisory and is not to be considered as the sole basis for the development of the staffing plan. For the purposes of the Government estimate, 2000 hours constitute a staff year.

*To be incorporated into any resultant contract.

(End of Provision)

2052.216-71 Indirect cost rates.

As prescribed at 2016.307-70(b), the contracting officer may insert the following clause in solicitations and contracts where provisional rates without ceiling apply.

Indirect Cost Rates (Jan 1993)

(a) Pending the establishment of final indirect rates which must be negotiated based on audit of actual costs, the contractor shall be reimbursed for allowable indirect costs as follows: *

(b) The contracting officer may adjust the above rates as appropriate during the term of the contract upon acceptance of any revisions proposed by the contractor. It is the

contractor's responsibility to notify the contracting officer in accordance with FAR 52.232-20, Limitation of Cost, or FAR 52.232-22, Limitation of Funds, as applicable, if these changes affect performance of work within the established cost or funding limitations.

*To be incorporated into any resultant contract.

(End of Clause)

Alternate 1

As prescribed at 2016.307-70(b)(2), the contracting officer may insert the following clause in applicable solicitations and contracts where predetermined rates apply:

Indirect Cost Rates—Alternate 1 (Jan 1993)

The contractor is reimbursed for allowable indirect costs in accordance with the following predetermined rates: *

*To be incorporated into any resultant contract.

(End of Clause)

Alternate 2 (Date)

As prescribed at 2016.307-70(b), the contracting officer may insert the following clause in applicable solicitations and contracts where provisional rates with ceilings apply:

Indirect Costs (Ceiling)—Alternate 2 (Date)

(a) For this contract, the ceiling amount reimbursable for indirect costs is as follows: *

(b) In the event that indirect rates developed by the cognizant audit activity on the basis of actual allowable costs result in a lower amount for indirect costs, the lower amount will be paid. The Government may not be obligated to pay any additional amounts for indirect costs above the ceiling rates set forth above for the applicable period.

*To be incorporated into any resultant contract.

(End of Clause)

2052.216-72 Task order procedures.

As prescribed at 2016.506-70(a), the contracting officer may insert the following clause in applicable solicitations and contracts that contain task order procedures. This clause may be altered to fit the circumstances of the requirement.

Task Order Procedures (Date)

(a) Task order request for proposal. When a requirement within the scope of work for this contract is identified, the contracting officer shall transmit to the contractor a Task Order Request for Proposal (TORFP) which may include the following, as appropriate:

(1) Scope of work/meetings/travel and deliverables;

(2) Reporting requirements;

(3) Period of performance—place of performance;

(4) Applicable special provisions;

(5) Technical skills required; and

(6) Estimated level of effort.

(b) Task order technical proposal. By the date specified in the TORFP, the contractor

shall deliver to the contracting officer a written or verbal (as specified in the TORFP technical proposal submittal instructions) technical proposal that provides the technical information required by the TORFP.

(c) Cost proposal. The contractor's cost proposal for each task order must be fully supported by cost and pricing data adequate to establish the reasonableness of the proposed amounts. When the contractor's estimated cost for the proposed task order exceeds \$100,000 and the period of performance exceeds six months, the contractor may be required to submit a Contractor Spending Plan (CSP) as part of its cost proposal. The TORP indicates if a CSP is required.

(d) Task order award. The contractor shall perform all work described in definitized task orders issued by the contracting officer. Definitized task orders include the following:

(1) Statement of work/meetings/travel and deliverables;

(2) Reporting requirements;

(3) Period of performance;

(4) Key personnel;

(5) Applicable special provisions; and

(6) Total task order amount including any fixed fee.

(End of Clause)

2052.216-73 Accelerated task order procedures.

As prescribed at 2016.506-70(b), the contracting officer may insert the following clause in applicable solicitations and contracts which contain task order procedures. This clause may be altered to fit the circumstances of the requirement.

Accelerated Task Order Procedures (Jan 1993)

(a) The NRC may require the contractor to commence work before receipt of a definitized task order from the contracting officer. Accordingly, when the contracting officer verbally authorizes the work, the contractor shall proceed with performance of the task order subject to the monetary limitation established for the task order by the contracting officer.

(b) When this accelerated procedure is employed by the NRC, the contractor agrees to begin promptly negotiating with the contracting officer the terms of the definitive task order and agrees to submit a cost proposal with supporting cost or pricing data. If agreement on a definitized task order is not reached by the target date mutually agreed upon by the contractor and contracting officer, the contracting officer may determine a reasonable price and/or fee in accordance with Subpart 15.8 and Part 31 of the FAR, subject to contractor appeal as provided in 52.233-1, Disputes. In any event, the contractor shall proceed with completion of the task order, subject only to the monetary limitation established by the contracting officer and the terms and conditions of the basic contract.

(End of Clause)

2052.222-70 Nondiscrimination because of age.

As prescribed at 2022.901-70, the contracting officer shall insert the following clause in all solicitations:

Nondiscrimination Because of Age (Jan 1993)

It is the policy of the Executive Branch of the Government that:

(a) Contractors and subcontractors engaged in the performance of Federal contracts may not, in connection with the employment, advancement, or discharge of employees or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement; and

(b) That contractors and subcontractors, or persons acting on their behalf, may not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

(End of Provision)

2052.227-70 Drawings, designs, specifications, and other data.

As prescribed at 2027.305-70, the contracting officer shall insert the following clause in all solicitations and contracts in which drawings, designs, specifications, in other data will be developed and the NRC must retain full rights to them (except for the contractor's right to retain a copy for its own use). When any of the clauses prescribed at FAR 27.409 are included in the solicitation and contract, this clause will not be used.

Drawings, Designs, Specifications, and Other Data (Jan 1993)

All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs, negatives, reports, findings, recommendations, other data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the work or any part thereto, are subject to inspection by the Commission at all reasonable times. Inspection of the proper facilities must be afforded the Commission by the contractor and its subcontractors. These data are the property of the Government and may be used by the Government for any purpose whatsoever without any claim on the part of the contractor and its subcontractors and vendors for additional compensation and must, subject to the right of the contractor to retain a copy of the material for its own use, be delivered to the Government, or otherwise disposed of by the contractor as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor's right of retention and use is subject to the security, patent, and use of information provisions, if any, of this contract.

(End of Clause)

2052.231-70 Precontract costs.

As prescribed in 2031.109-70, the following clause may be used in all cost type contracts when costs in connection with work under the contract will be incurred by the contractor before the effective date of the contract. Approval for use of this clause must be obtained at one level above the contracting officer.

Precontract Costs (Jan 1993)

Allowable costs under this contract must include such costs incurred by the contractor in connection with the work covered by this contract during the period from * and including * to the effective date of this contract, as would have been allowable pursuant to the terms of this contract if this contract had been in effect during that period; provided, however, that the costs may not in aggregate exceed * which is included in the estimated cost of this contract.

*To be incorporated into any resultant contract.

(End of Clause)

2052.235-70 Publication of research results.

As prescribed in 2035.70(a)(1), the contracting officer shall insert the following clause in applicable solicitations and contracts for research and development by private contractors and universities and for other technical services as appropriate.

Publication of Research Results (Date)

(a) The principal investigator(s)/contractor shall comply with the provisions of NRC Management Directive 3.8 (Vol. 3, Part 1) and NRC Handbook 3.8 (Parts I-IV) regarding publication in refereed scientific and engineering journals or dissemination to the public of any information, oral or written, concerning the work performed under this contract. Failure to comply with this clause shall be grounds for termination of this contract.

(b) The principal investigator(s)/contractor may publish the results of this work in refereed scientific and engineering journals or in open literature and present papers at public or association meetings at interim stages of work, in addition to submitting to NRC the final reports and other deliverables required under this contract. However, such publication and papers shall focus on advances in science and technology and minimize conclusions and/or recommendations which may have regulatory implications.

(c) The principal investigator(s) shall coordinate all such publications with, and transmit a copy of the proposed article or paper to, the NRC Contracting Officer or Project Officer, prior to publication. The NRC agrees to review and provide comments within thirty (30) days after receipt of a proposed publication. However, in those cases where the information to be published

is subject to Commission approval, has not been ruled upon, or disapproved by the Commission, the NRC reserves the right to disapprove or delay the publication. Further, if the NRC disagrees with the proposed publication for any reason, it reserves the right to require that any publication not identify the NRC's sponsorship of the work and that any associated publication costs shall be borne by the contractor.

(End of Clause)

2052.235-71 Safety, Health, and Fire Protection.

As prescribed in 2035.70(a)(2), the contracting officer shall insert the following clause in applicable solicitations and contracts for research and development by private contractors and universities and for other technical services as appropriate:

Safety, Health, and Fire Protection (Jan 1993)

The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the health and safety of its employees and of members of the public, including NRC employees and contractor personnel, and to minimize danger from all hazards to life and property and shall comply with all applicable health, safety, and fire protection regulations and requirements (including reporting requirements) of the Commission and the Department of Labor. In the event that the contractor fails to comply with these regulations or requirements, the contracting officer may, without prejudice to any other legal or contractual rights of the Commission, issue an order stopping all or any part of the work; thereafter, a start work order for resumption of work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, this type of work stoppage.

(End of Clause)

2052.242-70 Resolving differing professional views.

As prescribed in 2042.570-1, the contracting officer shall insert the following clause in the body of cost reimbursement solicitations and contracts for professional services, as appropriate. This clause may not be altered by the contracting officer.

Resolving NRC Contractor Differing Professional Views (DPVs) (Date)

(a) The Nuclear Regulatory Commission's (NRC) policy is to support the contractor's expression of professional health and safety related concerns associated with the contractor's work for NRC that may differ from a prevailing NRC staff view, disagree with an NRC decision or policy position, or take issue with proposed or established agency practices. An occasion may arise when an NRC contractor, contractor's personnel, or subcontractor personnel believes that a conscientious expression of a competent judgment is required to document

such concerns on matters directly associated with its performance of the contract. The NRC's policy is to support these instances as Differing Professional Views (DPVs).

(b) The procedure that will be used provides for the expression and resolution of differing professional views (DPVs) of health and safety related concerns associated with the mission of the agency by NRC contractors, contractor personnel or subcontractor personnel on matters directly associated with its performance of the contract. This procedure may be found in Attachments to this document. The contractor shall provide a copy of the NRC DPV procedure to all of its employees performing under this contract and to all subcontractors who shall, in turn, provide a copy of the procedure to its employees. NOTE: The prime contractor or subcontractor shall submit all DPV's received but need not endorse them.

(End of Clause)

2052.242-71 Procedures for resolving differing professional views.

As prescribed in 2042.570-2(b), the contracting officer shall include the following clause as an attachment to cost reimbursement solicitations and contracts for professional services, as appropriate. This clause may not be altered by the contracting officer.

Procedures for Resolving NRC Contractor Differing Professional Views (DPVs) (Date)

(a) The following procedure provides for the expression and resolution of differing professional views (DPVs) of health and safety related concerns of NRC contractors and contractor personnel on matters connected to the subject of the contract. Subcontractor DPVs shall be submitted through the prime contractor. The prime contractor or subcontractor shall submit all DPV's received but need not endorse them.

(b) The NRC may authorize up to eight reimbursable hours for the contractor to document in writing a DPV by the contractor,

the contractor's personnel, or subcontractor personnel. The contractor shall not be entitled to any compensation for effort on a DPV which exceeds the above-specified eight hour limit.

(c) Prior to incurring costs to document a DPV, the contractor shall first determine whether there are sufficient funds obligated under the contract which are available to cover the costs of writing a DPV. In the event that there are insufficient obligated funds under the contract, the contractor shall first request the NRC contracting officer for additional funding to cover the costs of preparing the DPV and authorization to proceed.

(d) Contract funds shall not be authorized to document an allegation where the use of this NRC contractor DPV process is inappropriate. Examples of such instances are: allegations of wrongdoing which should be addressed directly to the NRC Office of the Inspector General (OIG), issues submitted anonymously, or issues raised which have already been considered, addressed, or rejected, absent significant new information. Note that this procedure does not provide anonymity. Individuals desiring anonymity should contact the NRC OIG or submit the information under NRC's Allegation Program, as appropriate.

(e) When required, the contractor shall initiate the DPV process by submitting a written statement directly to the NRC Office Director or Regional Administrator responsible for the contract, with a copy to the Contracting Officer, Division of Contracts and Property Management, Office of Administration. Each DPV submitted will be evaluated on its own merits.

(f) The DPV, while being brief, shall contain the following as it relates to the subject matter of the contract:

(1) A summary of the prevailing NRC view, existing NRC decision or stated position, or the proposed or established NRC practice.

(2) A description of the submitter's views and how they differ from any of the above items.

(3) The rationale for the submitter's views, including an assessment based on risk, safety and cost benefit considerations of the consequences should the submitter's position not be adopted by NRC.

(g) The Office Director or Regional Administrator will immediately forward the submittal to the NRC DPV Review Panel and acknowledge receipt of the DPV, ordinarily within five (5) calendar days of receipt.

(h) The panel will normally review the DPV within seven calendar days of receipt to determine whether enough information has been supplied to undertake a detailed review of the issue. Typically, within 30 calendar days of receipt of the necessary information to begin a review, the panel will provide a written report of its findings to the Office Director or Regional Administrator and to the Contracting Officer, which includes a recommended course of action.

(i) The Office Director or Regional Administrator will consider the DPV Review Panel's report, make a decision on the DPV and provide a written decision to the contractor and the Contracting Officer normally within seven calendar days after receipt of the panel's recommendation.

(j) Subsequent to the decision made regarding the DPV Review Panel's report, a summary of the issue and its disposition will be included in the NRC Weekly Information Report submitted by the Office Director. The DPV file will be retained in the Office or Region for a minimum of one year thereafter. For purposes of the contract, the DPV shall be considered a deliverable under the contract. Based upon the Office Director or Regional Administrator's report, the matter will be closed.

(End of Clause)

Dated at Rockville, Maryland this 9th day of November, 1998.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

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