

## Argonne National Laboratory Prime Contract

### Part II. Section I. Contract Clauses

Last revised: September 29, 1999

#### Clause I.78 - DEAR 970.5204-13 Allowable Costs and Performance Fee (Management and Operating Contracts) (Mar 1998) (Deviation)

- (a) Compensation for Contractor's Services. Payment for the allowable costs as hereinafter defined, and of the performance fee(s), if any, as hereinafter provided, shall constitute full and complete compensation for the performance of the work under this contract.
- (b) Performance Fees. The maximum performance fees earnable by the Contractor in accordance with the provisions of Appendix B - Performance Criteria and Measures for the performance of the work under this contract commencing October 1, 1999, are as follows:
- (1) From October 1, 1999 through September 30, 2000 - \$2,750,000
  - (2) From October 1, 2000 through September 30, 2001 - \$2,832,500
  - (3) From October 1, 2001 through September 30, 2002 - \$2,915,000
  - (4) From October 1, 2002 through September 30, 2003 - \$2,997,500
  - (5) From October 1, 2003 through September 30, 2004 - \$3,080,000

There shall be no adjustment in the amount of the Contractor's maximum performance fee(s) earnable by reason of differences between any estimate of cost for performance of the work under this contract and the actual costs for performance of that work.

- (c) Allowable Costs. The allowable cost of performing the work under this contract shall be the costs and expenses that are actually incurred by the Contractor in the performance of the contract work in accordance with its terms, that are necessary or incident thereto, and that are determined to be allowable as set forth in this paragraph. The determination of allowability of cost shall be based on:
- (1) Allowability and reasonableness in accordance with FAR 31.201-2(d) and 31.201-3;
  - (2) Standards promulgated by the Cost Accounting Standards Board, if applicable; otherwise, generally accepted accounting principles and practices appropriate to the particular circumstances; and
  - (3) Recognition of all exclusions and limitations set forth in this clause or elsewhere in this contract as to types or amounts of items of cost.

Allowable costs shall not include the cost of any item described as unallowable in paragraph (e) of this clause except as indicated therein. Failure to mention an item of

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cost specifically in paragraphs (d) or (e) of this clause shall not imply either that it is allowable or that it is unallowable.

- (d) Items of Allowable Cost. Subject to the other provisions of this clause, the following items of cost of work done under this contract shall be allowable to the extent indicated:
- (1) Bonds and insurance, including self-insurance, as provided in the clause entitled, Insurance - Litigation and Claims.
  - (2) Communication costs, including telephone services, local and long-distance calls, telegrams, cablegrams, postage, and similar items.
  - (3) Consulting services (including legal and accounting), and related expenses, as approved by the Contracting Officer, except as made unallowable by paragraphs (e)(16) and (e)(26).
  - (4) Reasonable litigation and other legal expenses, including counsel fees, if incurred in accordance with the clause of the contract entitled, Insurance -- Litigation and Claims, and the DOE approved contractor litigation management procedures (including cost guidelines) as such procedures may be revised from time to time, and if not otherwise made unallowable in this contract.
  - (5) Losses and expenses (including settlements made with the consent of the Contracting Officer) sustained by the Contractor in the performance of this contract and certified in writing by the Contracting Officer to be reasonable, except the losses and expenses expressly made unallowable under other provisions of this contract.
  - (6) Materials, supplies, and equipment, including freight transportation, material handling, inspection, storage, salvage, and other usual expenses incident to the procurement, use and disposition thereof, subject to approvals required under other provisions of this contract.
  - (7) Patents, purchased design, license fees, and royalty payments to the extent expressly provided for under other provisions in this contract or as approved by the Contracting Officer, and preparation of invention disclosures, reports and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with any Patent Rights clause of this contract.

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- (8) Personnel costs and related expenses incurred in accordance with the personnel appendix which is hereby incorporated by reference and made a part of this contract. It is specifically understood and agreed that said personnel appendix sets forth in detail personnel costs and related expenses to be allowable under this contract and is intended to document those personnel policies, practices and plans which have been found acceptable by the Contracting Officer. It is further understood and agreed that the Contractor will advise DOE of any proposed changes in any matters covered by said policies, practices or plans which relate to this item of cost, and that the personnel appendix may be modified from time to time in writing by mutual agreement of the Contractor and DOE without execution of an amendment to this contract for the purpose of effectuating any such changes in, or additions to, said personnel appendix as may be agreed upon by the parties. Such modifications shall be evidenced by execution of written numbered approval letters from the Contracting Officer or his representative. Types of personnel costs and related expenses to be incorporated into the personnel appendix, or amendments thereto, are as follows:
- (i) Salaries and wages; bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; nonwork time, including vacations, holidays, sick, funeral, military, jury, witness, and voting leave; salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (Contractor) committees; provided, however, that Contracting Officer approval of the total compensation (i.e., salaries and bonuses) payable for each identified position in Section V, paragraph E, of Part III, Section J, Appendix A is required. Total compensation, as used here, includes only the employee's base salary, bonus, and incentive compensation payments;
  - (ii) Legally required contributions to old-age and survivors' insurance, unemployment compensation plans, and workers compensation plans, (whether or not covered by insurance); voluntary or agreed-upon plans providing benefits for retirement, separation, life insurance, hospitalization, medical-surgical and unemployment (whether or not such plans are covered by insurance);
  - (iii) Travel (except foreign travel, which unless delegated requires specific approval by the Contracting Officer on a case-by-case basis); incidental subsistence and other allowances of Contractor employees, in connection with performance of work under this contract (including new employees

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- reporting for work and transfer of employees, the transfer of their household goods and effects and the travel and subsistence of their dependents);
- (iv) Employee relations, welfare, morale, etc.; programs including incentive or suggestion awards; employee counseling services, health or first-aid clinics; house or employee publications; and wellness/fitness centers;
  - (v) Personnel training, (except special education and training courses and research assignments calling for attendance at educational institutions which require specific approval by the Contracting Officer; including apprenticeship training programs designed to improve efficiency and productivity of contract operations, to develop needed skills, and to develop scientific and technical personnel in specialized fields required in the contract work;
  - (vi) Recruitment of personnel (including help-wanted advertisement), including service of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the Contractor for employment interviews; and
  - (vii) Net cost of operating plant-site cafeteria, dining rooms, and canteens attributable to the performance of the contract.
  - (viii) Compensation of a senior executive, provided that such compensation does not exceed the benchmark compensation amount determined applicable for the Contractor fiscal year by the Administrator, Office of Federal Procurement Policy. Costs of executive compensation shall be determined pursuant to Federal Acquisition Regulation 31.205-6(p).
- (9) Repairs, maintenance, inspection, replacement, and disposal of Government-owned property and the restoration or clean-up of site and facilities to the extent approved by the Contracting Officer and as allowable under paragraph (f) of the clause of this contract entitled, Property.
- (10) Subcontracts and purchase orders, including procurements from Contractor-controlled sources, subject to approvals required by other provisions of this contract.

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- (11) Subscriptions to trade, business, technical and professional periodicals, as approved by the Contracting Officer.
  - (12) Taxes, fees, and charges levied by public agencies which the Contractor is required by law to pay, except those which are expressly made unallowable under other provisions of this contract.
  - (13) Utility services, including electricity, gas, water and sewerage.
  - (14) Indemnification of the Pension Benefit Guaranty Corporation, pursuant to the Employee Retirement Income Security Act of 1974, in accordance with FAR 31.205-6(j)(3)(iv).
  - (15) Establishment and maintenance of financial institution accounts in connection with the work hereunder, including, but not limited to, service charges, the cost of disbursing cash, necessary guards, cashiers, and paymasters. If payments to employees are made by check, facilities and arrangements for cashing checks may be provided without expense to the employees, subject to the approval of the Contracting Officer.
- (e) Items of Unallowable Costs. The following items of costs are unallowable under this contract to the extent indicated:
- (1) Advertising and public relations costs designed to promote the Contractor or its products, including the costs of promotional items and memorabilia such as models, gifts and souvenirs, and the cost of memberships in civic and community organizations; except those advertising and public relations costs:
    - (i) Specifically required by the contract,
    - (ii) Approved, in advance, by the Contracting Officer as clearly in furtherance of work performed under the contract,
    - (iii) That arise from requirements of the contract and that are exclusively for recruiting personnel, acquiring scarce items for contract performance, disposing of scrap or surplus materials, the transfer of federally-owned or originated technology to State and local governments and to the private sector, or acquisition of contract-required supplies and services, or
    - (iv) Where the primary purpose of the activity is to facilitate contract performance in support of the DOE mission.

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- (2) Bad debts (including expenses of collection) and provisions for bad debts arising out of other business of the Contractor.
- (3) Proposal expenses and costs of proposals, except for such expenses and costs which are incurred pursuant to the provisions of this contract, including but not limited to the "Agreements to Perform Non-DOE Activities" clause of this contract.
- (4) Bonuses and similar compensation under any other name, which:
  - (i) Are not pursuant to an agreement between the Contractor and employee prior to the rendering of the services or an established plan consistently followed by the Contractor or,
  - (ii) Are in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder, or
  - (iii) Provide total compensation to an employee in excess of reasonable compensation for the services rendered.
- (5) Central and branch office expenses of the Contractor, except as specifically set forth in the contract.
- (6) Commissions, bonuses, and fees (under whatever name) in connection with obtaining or negotiating for a Government contract or a modification thereto, except when paid to bona fide employees or bona fide established selling organizations maintained by the Contractor for the purpose of obtaining Government business.
- (7) Contingency reserves, provisions for.
- (8) Contributions and donations, including cash, Contractor-owned property and services, regardless of the recipient.
- (9) Depreciation in excess of that calculated by application of methods approved for use by the Internal Revenue Code of 1954, as amended, including the straight-line declining balance (using a rate not exceeding twice the rate which would have been used had the depreciation been computed under the straight-line method), or sum-of-the-years digits method, on the basis of expected useful life,

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- to the cost of acquisition of the related fixed assets less estimated salvage or residual value at the end of the expected useful life.
- (10) Dividend provisions or payments and, in the case of sole proprietors and partners, distributions of profit.
  - (11) Entertainment, including costs of amusement, diversion, social activities; and directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation and gratuities; costs of membership in any social, dining or country club or organization.
  - (12) Fines and penalties, except, with respect to civil fines and penalties only, if the Contractor demonstrates to the Contracting Officer that (i) Such a civil fine or penalty was incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the Contracting Officer; or (ii) Such a civil fine or penalty was imposed without regard to fault and could not have been avoided by the exercise of due care.
  - (13) Government-furnished property, except to the extent that cash payment therefor is required pursuant to procedures of DOE applicable to transfers of such property to the Contractor from others.
  - (14) Insurance (including any provisions of a self-insurance reserve) on any person where the Contractor under the insurance policy is the beneficiary, directly or indirectly; and insurance against loss of or damage to Government property as defined in clause I.84, Property.
  - (15) Interest, however represented (except (i) Interest incurred in compliance with the contract clause entitled "State and Local Taxes" or, (ii) imputed interest costs relating to leases classified and accounted for as capital leases under generally accepted accounting principles (GAAP), provided that the decision to enter into a capital leasing arrangement has been specifically authorized and approved by the DOE in accordance with applicable procedures and such interest costs are recorded in an appropriately specified DOE account established for such purpose), bond discounts and expenses, and costs of financing and refinancing operations.
  - (16) Legal, accounting, and consulting services and related costs incurred in connection with the preparation and issuance of stock, rights, organization or reorganization, prosecution or defense of antitrust suits, prosecution of claims against the United States, contesting actions of proposed actions of the United

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States, and prosecution or defense of patent infringement litigation (unless initiated at the request of DOE, or except where incurred pursuant to the Contractor's performance of the Government-funded technology transfer mission and in accordance with the Insurance -- Litigation and Claims clause).

- (17) Losses or expenses:
- (i) On, or arising from the sale, exchange, or abandonment of capital assets, including investments;
  - (ii) On other contracts, including the Contractor's contributed portion under cost-sharing contracts;
  - (iii) In connection with price reductions to and discount purchases by employees and others from any source;
  - (iv) That are compensated for by insurance or otherwise or which would have been compensated for by insurance required by law or by written direction of the Contracting Officer but which the Contractor failed to procure or maintain through its own fault or negligence;
  - (v) That result from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel (as that term is defined in the clause of this contract entitled, Property);
  - (vi) That represent liabilities to third persons that are not allowable under the clause of this contract entitled, Insurance -- Litigation and Claims; or
  - (vii) That represent liabilities to third persons for which the Contractor has expressly accepted responsibility under other terms of this contract.
- (18) Maintenance, depreciation, and other costs incidental to the Contractor's idle or excess facilities (including machinery and equipment), other than reasonable standby facilities.
- (19) Membership in trade, business, and professional organizations, except as approved by the Contracting Officer.
- (20) Precontract costs, except as expressly made allowable under other provisions in this contract.

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- (21) Independent Research and Development Costs, excluding Laboratory Directed Research and Development or unless specifically provided for elsewhere in this contract.
- (22) Selling cost, except to the extent they are determined to be reasonable and to be allocable to the contract. Allocability of selling costs to the contract will be determined in the light of reasonable benefit to the agency program arising from such activities as technical, consulting, demonstration, and other services performed for such purposes as applying or adapting the Contractor's product for agency use.
- (23) Storage of records pertaining to this contract after completion of operations under this contract, irrespective of contractual or statutory requirement for the preservation of records.
- (24) Taxes, fees, and charges in connection with financing, refinancing, or refunding operations, including listing of securities on exchanges, taxes which are paid contrary to the clause entitled "State and Local Taxes," federal taxes on net income and excess profits, special assessments on land which represent capital improvement and taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans pursuant to Section 4971 or Section 4975 of the Internal Revenue Code of 1954, as amended, respectively.
- (25) Travel expenses of the officers, proprietors, executives, administrative heads and other employees of the Contractor's central office or branch office organizations concerned with the general management, supervision, and conduct of the Contractor's business as a whole, except to the extent that particular travel is in connection with the contract and approved by the Contracting Officer.
- (26) Salary or other compensation (and expenses related thereto) of any individual employed under this contract as a consultant or in another comparable employment capacity who is an employee of another organization and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with DOE, except to the extent that cash payment therefor is required pursuant to the provisions of this contract or procedure of DOE applicable to the borrowing of such an individual from another cost-type Contractor.

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- (27) Travel by commercial aircraft or travel by other than common carrier that is not necessary for the performance of this contract or the cost of which exceeds the lesser of the lowest available commercial discount airfare, Government contract airfare, or customary standard (coach or equivalent) commercial airfare. Airfare costs in excess of the lowest such airfare are unallowable, except when such accommodations:
- (i) Require circuitous routing;
  - (ii) Require travel during unreasonable hours;
  - (iii) Excessively prolong travel;
  - (iv) Result in increased cost that would offset transportation savings;
  - (v) Would offer accommodations not reasonably adequate for the physical or medical needs of the traveler; or
  - (vi) Are not reasonably available to meet necessary mission requirements.
- Individual Contractor determinations of nonavailability of commercial discount airfare or Government contract airfare will not be contested by DOE when the Contractor can reasonably demonstrate such nonavailability or, on an overall basis, that established policies and procedures result in the routine use of the lowest available airfare. However, in order for air travel costs in excess of customary standard airfare to be allowable, the Contractor must justify and document the applicable condition(s) set forth above.
- (28) Special construction industry "funds" financed by employer contributions for such purposes as methods and materials research, public and industry relations, market development, and disaster relief, except as specifically provided elsewhere in this contract.
- (29) Late premium payment charges related to employee deferred compensation plan insurance.
- (30) Facilities capital cost of money. (CAS 414 and CAS 417).
- (31) Contractor costs incurred to influence either directly or indirectly --

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- (i) Legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State; or
  - (ii) Federal, State, or executive body of a political subdivision of a State action on regulatory and contract matters as described in the "Political Activity Cost Prohibition" clause of this contract.
- (32) Commercial automobile rental expenses, unless approved by the Contracting Officer.
- (33) Costs incurred in connection with any criminal, civil or administrative proceeding commenced by the Federal Government or a State, local or foreign government, as provided in the Clause titled "Cost Prohibitions Related to Legal and Other Proceedings" incorporated elsewhere in this contract.
- (34) Costs of alcoholic beverages.
- (35) Contractor employee travel costs incurred for lodging, meals and incidental expenses which exceed on a daily basis the applicable maximum per diem rates in effect for Federal civilian employees at the time of travel. When the applicable maximum per diem rate is inadequate due to special or unusual situations, the Contractor may pay employees for actual expenses in excess of such per diem rate limitation. To be allowable, however, such payments must be properly authorized by an officer or appropriate official of the Contractor and shall not exceed the higher amounts that may be authorized for Federal civilian employees in a similar situation.
- (36) Notwithstanding any other provision of this contract, the costs of bonds and insurance are unallowable to the extent they are incurred to protect and indemnify the Contractor and/or subcontractor against otherwise unallowable costs, unless such insurance or bond is required by law, the express terms of this contract, or is authorized in writing by the Contracting Officer. The cost of commercial insurance to protect the Contractor against the costs of correcting its own defects in materials or workmanship is an unallowable cost.
- (37) Costs of gifts; however, gifts do not include awards for performance or awards made in recognition of employee achievements pursuant to an established Contractor plan or policy.
- (38) The costs of recreation, registration fees of employees participating in competitive fitness promotions, team activities, and sporting events except for

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the costs of employees' participation in company sponsored intramural sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

- (39) Costs incurred in connection with any employee action, as provided in the clause entitled "Costs Associated with Whistleblower Actions".