

Argonne National Laboratory Prime Contract**Part II. Section I. Contract Clauses**

Last revised: September 29, 1999

Clause I.100 - DEAR 970.5204-45 Termination (Oct 1995) (Deviation)

- (a) This contract shall continue until September 30, 2004 unless sooner terminated in accordance with the provisions which follow:
- (1) The performance of work under this contract may be terminated by the Government in whole, or from time to time in part, (i) whenever the Contractor shall default in performance, and shall fail to cure the fault or failure within such period as the Contracting Officer may allow after receipt from the Contracting Officer of a notice specifying the fault or failure, or (ii) whenever, for any reason, the Contracting Officer shall determine any such termination is for the best interest of the Government. Termination of the work hereunder shall be effected by delivery of a notice of termination specifying whether termination is for default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract shall be terminated, and the date upon which such termination shall become effective. Any such termination shall be without prejudice to any claim which either party may have against the other. If, after notice of termination under the provisions of (a)(1)(i) of this section, it is determined for any reason that the Contractor was not in default, such notice of default shall be deemed to have been issued pursuant to (a)(1)(ii) of this section, and the rights and obligations of the Parties hereto shall in such event be governed accordingly.
 - (2) Upon receipt of notice of termination, in accordance with (1) above, the Contractor shall, to the extent directed in writing by the Contracting Officer, discontinue the terminated work and the placing of orders for materials, facilities, supplies, and services in connection therewith, and shall proceed, if, and to the extent required by the Contracting Officer, to cancel promptly and settle with the approval of the Contracting Officer, existing orders, subcontracts, and commitments insofar as such orders, subcontracts, and commitments pertain to this contract.
- (b) Upon the termination of this contract, full and complete settlement of all claims of the Contractor and of DOE arising out of this contract shall be made as follows:
- (1) The Government shall have the right in its discretion to assume sole responsibility for any or all obligations, commitments, and claims that the Contractor may have undertaken or incurred, the cost of which are allowable in accordance with the provisions of this contract; and the Contractor shall, as a condition of receiving the payments mentioned in this Clause, execute and deliver all such papers and; take all such steps as the Contracting Officer may

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require for the purpose of fully vesting in the Government any rights and benefits the Contractor may have under or in connection with such obligations, commitments, or claims.

- (2) The Government shall treat as allowable costs all expenditures made in accordance with and allowable under the clause entitled "Allowable Costs and Performance Fee (Management and Operating Contracts)," not previously so allowed or otherwise credited for work performed prior to the effective date of termination, together with expenditures as may be incurred for a reasonable time thereafter with the approval of, or as directed by, the Contracting Officer.
- (3) The Government shall treat as allowable costs, to the extent not included in paragraph (b)(2) of this section, the costs of settling and paying claims arising out of the termination of work under orders, subcontracts, and commitments as provided in paragraph (a)(2) of this section.
- (4) The Government shall treat as allowable costs the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the termination of the contract and for the termination and settlement of orders and subcontracts thereunder, together with such further expenditures made by the Contractor after the date of termination for the protection or disposition of Government property as are approved or required by the Contracting Officer; provided, however, that if the termination is for default of the Contractor, there shall not be included any amount for preparation of the Contractor's settlement proposal.
- (5) If performance of work under this contract is terminated in whole by the Government, the performance fee of the Contractor shall be prorated to and including the effective date of such termination. In addition, if the termination is for the convenience of the Government, the Contractor shall be paid a fixed fee in an amount to be agreed upon as compensation for its services in closing out the work under this contract after the effective date of such termination. The additional fixed fee is to be negotiated as soon as practicable after service of notice of termination, shall take into account the estimate of the cost of the services and managerial effort to be rendered under this clause after the effective date of termination, and shall be provided for in a supplement or amendment to this contract prior to final settlement hereunder. Pending agreement as to the amount of such fee, the Contractor shall diligently proceed with the performance of the services required under this clause. No additional fee will be paid if the contract is terminated due to the default of the Contractor.

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In the event of a partial termination by the Government, an equitable adjustment shall be made in the performance fee if such termination results in a material decrease in the level of the Contractor's management effort. Any failure to agree on the right to or the amount of any adjustment shall be deemed a dispute within the purview of the clause hereof entitled "Disputes".

- (6) The obligation of the Government to make any of the payments required by this Clause or any other provisions of this contract shall be subject to any unsettled claims in connection with this contract which the Government may have against the Contractor.

- (c) Prior to final settlement, the Contractor shall furnish a release as required in the clause entitled "Payments and Advances" and account for Government-owned property as may be required by the Contracting Officer; provided, however, that unless the Contracting Officer requires an inventory, the maintenance and disposition of the records of Government-owned property in accordance with the clause entitled "Accounts, Records and Inspection" shall be accepted by the Contracting Officer as full compliance with all requirements of this contract pertaining to an accounting for such property.