

Argonne  
National  
Laboratory

Intra-Laboratory Memorandum

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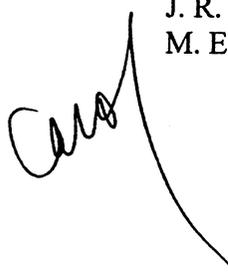
October 11, 1999

To:

J. G. Asbury	G. Bokar
R. Bouie	H. Cordell
Y. I. Chang	E. Kolsto
H. Drucker	W. Luck
F. Y. Fradin	L. Miller
W. H. Hannum	J. Weinberger
J. LaFevers	G. Wojciechowski
J. McGrath	D. Clayton
D. E. Moncton	J. R. Kroll
J. W. O'Kelley	M. E. Sheridan
C. A. Quinn	

From: H. Carol Bernstein

Subject: Prime Contract



Here is a copy of the new Prime Contract effective October 1, 1999. Please distribute it to relevant members of your staff, as appropriate.

We are preparing a summary of clauses and major terms to aid you in navigation of the Contract, but please do not hesitate to call me if you have any questions concerning the Agreement.

HCB:mab

c: w/o encl.  
D. Bugielski  
M. Bartos  
S. Golden  
R. Malhotra  
A. Nisius  
D. Schmitt

Prime Contract



## Department of Energy

Argonne Group  
9800 South Cass Avenue  
Argonne, Illinois 60439

September 29, 1999

Mr. Arthur M. Sussman  
Vice President for Argonne National Laboratory  
The University of Chicago  
5801 South Ellis Avenue, Room 503  
Chicago, Illinois 60637

SUBJECT: UNDERSTANDINGS REGARDING MODIFICATION NO. M345  
TO CONTRACT NO. W-31-109-ENG-38

Dear Mr. Sussman:

I am pleased that the University of Chicago (Contractor) and the Department of Energy (DOE), following recent discussions between the Parties, have been able to agree on the content and wording of Modification No. 345 to Contract No. W-31-109-ENG-38 (the Contract), to provide for the management and operation of Argonne National Laboratory for DOE. The University of Chicago requested clarification of certain provisions of the contract to further understand and implement these provisions. This letter addresses those clarifications for the particular provisions that follow, as referenced by the applicable Section or Clause as set forth in the above-referenced Modification.

1. Section C – Description/Specifications/Statement of Work. The Parties agree that there are currently no "Specifications" in the Contract.
2. Clause H.1 – Additional Definitions. While the Parties agree that it is not necessary to include a definition of "fee" in this Clause, it is understood that the term "fee," as used throughout the Contract, means only "performance fee", as the latter term is used in paragraph (a) of Clause I.102 - Total Available Fee: Base Fee Amount And Performance Fee Amount – Alternates II AND III and the maximum fee amounts are provided for in paragraph (b) of Clause I.78 – Allowable Costs And Performance Fee (Management And Operating Contracts). Board of Governors Expenses and University of Chicago Central Office Expenses specifically are not "fee" and are costs which shall be reimbursed pursuant to Clause H.29 - University Central Office and Board of Governors Expenses, Clause I.78, and applicable cost principles.

3. Clause H.5 – Work For Others Funding Authorization. The references to “contractor corporate funds” are understood to continue to mean the “contractor’s own funds”.
4. Clause H.20 – Royalty Information During Term of Contract. The University will follow the terms of this Clause, in lieu of Clause I.38, FAR 52.227-6, Royalty Information (APR 1984), since Clause I.38 is directed to a solicitation and a response.
5. Clause H.21 – Patent Rights. The annual appraisal under paragraph (r), if any, shall be conducted coincident with the appraisal and evaluation criteria and measurements of the Laboratory pursuant to Appendix B.
6. Clause H.21 – Patent Rights and Clause I.96 – Technology Transfer Mission. The royalty or other income from the University to be used at the facility pursuant to subparagraph (k)(3) of Clause H.21 and paragraph (h) of Clause I.96 may be used by the Laboratory to provide advance payments for Work for Others (WFO). Such funded WFO shall be subject to the DOE Order 481.1 WFO terms and conditions, with a waiver of DOE rights to the sponsor, provided such advance payments are reimbursed by the Sponsor, and secondary rights in the Laboratory’s inventions to the University (e.g., if not to the Sponsor). A waiver has been approved to reflect these rights.
7. Clause H.23 – Other Patent Related Matters. This Clause applies to privately funded technology transfer by the University as defined in subparagraph (b)(9) of Clause I.96, Technology Transfer Mission.
8. Clause H.28 – Joint Research Projects. The joint-research projects may be effected using the Work for Others process and the terms of DOE Order 481.1 with privately funded Intellectual Property terms applied thereto. It is expected that an approved simplified process and format will be effected to expedite these interactions.
9. Clause H.36 – Lobbying Restriction (Energy & Water Development Appropriations Act, 1999). This Clause’s restriction on the Contractor’s expenditure, directly or indirectly, of funds obligated on the Contract to influence matters pending before Congress has been interpreted in a memorandum dated January 8, 1999, issued by the DOE Office of General Counsel, as not extending to the Contractor’s use of fee.
10. Clause H.37 – Lobbying Restriction (Department of the Interior and Related Agencies Appropriations Act, 1999). This Clause’s restriction on the Contractor’s making available funds obligated on the Contract for any activity or publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete, has been interpreted in a memorandum dated January 8, 1999, issued by the DOE Office of General Counsel, as not extending to the Contractor’s use of fee.

11. Clause I.56 – Indemnification Under Public Law 85-804. The Parties confirm that, as provided in paragraph (f) of Article 67A as added by Modification Nos. 293 and 303 to the Contract, the rights and obligations of the Parties under Article 67A survive the Contract's termination, expiration, or completion.
12. Clause I.65 – Organizational Conflicts of Interest. The provisions of this Clause will be interpreted in accordance with applicable DEAR/FAR provisions.
13. Clause I.78 – Allowable Costs and Performance Fee (Management and Operating Contracts). The costs of DOE-funded technology transfer are allowable costs in accordance with the Allowable Cost paragraph in the Technology Transfer Mission Clause of this contract pursuant to paragraph (d).
14. Clause I.78 Allowable Costs and Performance Fee (Management and Operating Contracts). Subparagraph (d)(8)(viii), on the allowability of compensation for senior executives, applies to the extent of determining the total allowable cost to the Government, but does not affect the overall compensation the Contractor may provide a senior executive.

With regard to the allowability of commercial automobile rental expenses, as addressed by subparagraph (e)(32), because of the controls inherent in the Contractor's policies applicable to employee travel and those addressing authorized visitors and other business invitees, such reasonable expenses, when incurred by Contractor employees engaged in official business travel under the Contract, or by authorized visitors or business invitees respectively, are considered to be approved by the Contracting Officer.

In accordance with subparagraphs (e)(11) and (e)(38), the Contractor will not seek reimbursement under this contract for any costs associated with ARTS at Argonne, the ANL Holiday Party, ANL picnics, Breakfast with Santa, or tickets purchased for athletic or other special events. The net costs for operation of the ANL-East swimming pool are allowable expenses under subparagraph (e)(38).

15. Clause I.80 – Payments and Advances. With reference to paragraph (i), Collections, it is understood that Board of Governors Expenses and University of Chicago Central Office Expenses are not "collections".
16. Clause I.84 – Property. With regard to subparagraph (i)(2)(i), the requirement to conduct a baseline inventory within six months after execution of the contract is waived. All other inventories required under the contract shall be conducted and reported pursuant to Clause I.84.
17. Clause I.87 – Workmanship and Materials. With regard to subparagraph (a)(2)(i), that only new articles, equipment and materials be purchased without prior Contracting Officer approval, the Contracting Officer authorizes the Contractor to purchase for projects, not involving construction and maintenance, used articles, equipment and materials without receiving prior Contracting Officer approval when the Contractor determines that it is in the best interest of the Government to do so.

18. Clause I.88 – Consultant or Other Comparable Employment Services. With respect to Item (1), it is agreed that “[a] rate of remuneration significantly in excess” of the regular rate of remuneration means more than ten times the regular rate of remuneration (gross), not including any payment for expenses.
19. Clause I.91 – Insurance – Litigation and Claims. It is understood that the Contractor may continue to select outside counsel utilizing existing Basic Ordering Agreements for cases involving labor or employment issues. However, the Contractor’s retention of such counsel is subject to DOE’s approval. In addition, in all other instances, the Contractor’s selection and retention of outside counsel is subject to DOE’s approval unless otherwise subsequently provided.
20. Clause I.96 – Technology Transfer Mission. Paragraph (d) of this Clause requires the Contractor to have implementing procedures to avoid conflicts of interest, and provides that “These procedures shall apply to other employee-like persons participating in Laboratory research or related technology transfer activities.” With respect to those employee-like persons identified in that Clause, the Contractor’s conflict of interest procedures shall address or be applied to such persons where:
  - (a) in their capacity at the Laboratory such employee-like persons control the award or spending of Laboratory funds, or
  - (b) in their capacity at the Laboratory such employee-like persons control the direction of research and development work at the Laboratory, or
  - (c) such employee-like persons bring to their work at the Laboratory intellectual property in which they have an equity or ownership interest.
21. Clause I.96 – Technology Transfer Mission. Any inventions arising out of the research and development activities conducted with the Laboratory’s share of royalties or income as set forth in subparagraph (h)(1) shall be Subject Inventions under this contract and a waiver to the University providing the right of the University to elect Subject Inventions has been approved.
22. Clause I.96 – Technology Transfer Mission. The term “authorized technology transfer activity” of subparagraph (h) (1), line 2, means --Federally funded authorized technology transfer activities --.
23. Clause I.96 – Technology Transfer Mission. The University shall be deemed to have met the preference required in the selection of participants in subparagraph (n)(2)(ii) if the University utilizes the U. S. Competitiveness clauses of the CRADA manual for compliance therewith and, at the present time and until DOE issues further formal guidance on this issue, follows and applies the DOE procedures for contacting the U. S. Trade Representative.

24. Clause I.102 – Total Available Fee: Base Fee Amount and Performance Fee Amount. Paragraph (b) of Clause I.78 of the Contract states the Parties' agreement on fee, and Appendix B states the Parties' agreement as to the Performance Measures, Criteria, process and schedule for performance evaluation.
25. Clause I.105 – Facilities Management. The ANL "Life Cycle Asset Management System Description for Facility Management" (ANL "LCAM System Description"), including the procedures incorporated by reference therein as "Implementing Documents", is the "detailed written description of the proposed LCAM system" referred to in subparagraph (a)(1) of Clause I.105 - Facilities Management. Contracting Officer approval of the ANL "LCAM System Description" will be deemed approval of the ANL life cycle asset management system referred to in subparagraph (a)(2). "Significant changes," as referred to in subparagraph (a)(3), will be as defined in the approved ANL "LCAM System Description".
26. Clause I.109 – Make-Or-Buy Plan. With respect to the second sentence of subparagraph (b)(2), on communications with stakeholders, the Contractor shall determine the manner in which such communications occur. With reference to the submission of the Make-Or-Buy Plan called for by paragraph (c) in connection with the effective date of the contract, it is understood that the submission will occur prior to contract award.
27. Clause I.110 – Laws, Regulations, and DOE Directives. As regards paragraph (b), the Parties will continue to work cooperatively to: review and assess new directives; understand and discuss their applicability to, and implementation by, the Contractor; and consider how to adjust, if necessary, the Contractor's programmatic, operational, and contractual responsibilities in light of the new directives.
28. Clause I.115 – Reduction or Suspension of Advance, Partial, or Progress Payments. The process accorded by this Clause will be carried out in accordance with the provisions of Section 2051 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355, as codified at 41 U.S.C. 255(g) and implemented by DEAR 970.3272, and FAR 32.006.
29. Clause I.118 – Conditional Payment of Fee, Profit, or Incentives. Paragraph (a) of this Clause requires the Contractor to develop a documented Safety Management System and to obtain DOE approval of the System and its implementation. The Parties agree that the DOE approval will not be unreasonably withheld. It is understood that the language "if the Contractor fails to obtain approval of the . . ." System means " if the Head of Contracting Activity disapproves Contractor's. . ." System.

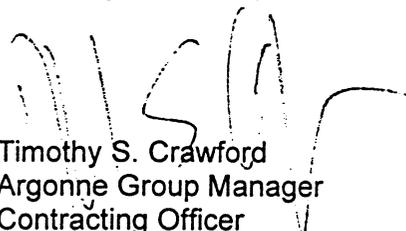
Paragraphs (a), (b), (c), and (d) address minimum contractor performance requirements for different subject areas. In the event that an element of the Contractor's performance results in a final determination by DOE of the Contractor's failure to meet the minimum requirements under one or more of these four paragraphs, whether by a failure to act as contemplated by the Contract or by acting other than in the manner contemplated by the

Contract, that failure of the Contractor's performance will be considered by DOE only once for purposes of adjusting contractor's earned fee.

With respect to paragraph (d), to the extent that any "cost performance levels" are applicable to the Contractor's performance of work under the Contract, DOE will work with the Contractor to identify such cost performance levels.

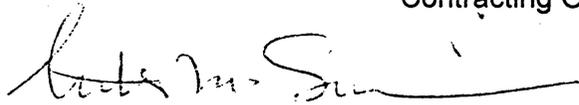
If your understanding of these matters is the same as indicated above, please sign indicating your concurrence and return a duplicate original to me.

Sincerely,



Timothy S. Crawford  
Argonne Group Manager  
Contracting Officer

Concur:



Arthur Sussman  
Vice President for Argonne National Laboratory

cc: H. C. Bernstein, ANL-OTD, 201  
R. Bouie, ANL-OPS, 201  
Y. I. Chang, ANL-OTD, 201  
S. D. Golden, University of Chicago  
A. Handwerker, CH-GL  
S. Martinez, CH-ARG

to the amount due and any balance shall be returned to the Government forthwith.

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- (g) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.
  - (h) Discounts. The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government.
  - (i) Collections. All collections accruing to the Contractor in connection with the work under this contract, except for the Contractor's fee and royalties or other income accruing to the Contractor from technology transfer activities in accordance with this contract, the use and disposition of which royalties and other income accruing to the Contractor from technology transfer activities in accordance with this contract are subject to the intellectual property and technology transfer provisions of this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, Regulations and DOE Directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the Special Financial Institution Account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the Contracting Officer.
  - (j) Direct payment of charges. The Government reserves the right, upon ten days written notice from the Contracting Officer to the Contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the Contractor therefor.

CLAUSE I.81 - DEAR 970.5204-17 POLITICAL ACTIVITY COST PROHIBITION (DEC 1997)

- (a) Pursuant to the allowable cost provisions established elsewhere under the contract, costs associated with the following activities are not reimbursable under the contract:
  - (1) Attempts to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activities;
  - (2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

Section I

(B) in licensing any entity subject to the control of a foreign company or government, whether such foreign government permits United States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements, and has policies to protect United States Intellectual Property rights.

(2) If the Contractor determines that neither of the conditions in paragraphs (f)(1)(i) or (ii) of this clause are likely to be fulfilled, the Contractor, prior to entering into such an agreement, must obtain the approval of the Contracting Officer. The Contracting Officer shall act on any such requests for approval within thirty (30) days.

(3) The Contractor agrees to be bound by the provisions of 35 U.S.C. 204 (Preference for United States industry).

(g) Indemnity -- Product Liability. In entering into written technology transfer agreements, including but not limited to, research and development agreements having as a primary purpose the transfer of Laboratory technology, licenses, assignments and CRADAs, the Contractor agrees to include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. The Contractor shall identify and obtain the approval of the Contracting Officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.

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(h) Disposition of Income.

(1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities under this clause or required to be used at the facility pursuant to the clause entitled PL 98-620 - Patent Rights, paragraph (k)(3) herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the Laboratory, consistent with the research and development mission and objectives of the Laboratory and subject to Section 12(b)(5) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(b)(5)) and Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.) as amended through the effective date of this contract award or modification. If the net amounts of such royalties and income received by the Laboratory from DOE funded technology transfer plus from privately funded technology transfer as required by paragraph (k)(3) of the clause entitled PL 98-620 - Patent Rights, after payment of patenting

costs, licensing costs, payments to inventors and authors, and other expenses incidental to the administration of intellectual property, during any fiscal year exceeds 5 percent of the Laboratory's budget for that fiscal year, 75 percent of such excess amount shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities or conducted with the required Laboratory's share of royalties and income provided in paragraph (k)(3) of the clause entitled PL 98-620- Patent Rights shall be deemed to be "Subject Inventions" under, and subject to the terms of, this contract. All other Intellectual Property arising out of such scientific research and development activities or conducted with the required Laboratory's share of royalties and income provided in paragraph (k)(3) of the clause entitled PL 98-620- Patent Rights, or in paragraph (b)(2) of the clause entitled Other Patent Related Matters, shall be deemed to arise under, and be subject to the terms of, this contract.

- (2) The Contractor shall include as a part of its annual Laboratory Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the Laboratory, and at the end of the year, provide a separate accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for an illegal augmentation of funds furnished by the U.S. Government.
  - (3) The Contractor shall establish subject to the approval of the Contracting Officer a policy for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the Contracting Officer.
- (i) Transfer to Successor Contractor. In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the Laboratory shall be transferred, at the Contracting Officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the Contracting Officer. The Contractor shall transfer title, as one package, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the Laboratory, to the successor contractor or to the Government as directed by the Contracting Officer.
- (j) Technology Transfer Affecting the National Security.
- (1) The Contractor shall notify and obtain the approval of the Contracting Officer, prior to entering into any technology transfer arrangement, when such technology or any part of such technology is classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168). Such notification shall include sufficient