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**University of California
Governmental Accounting Standards Board (GASB) Statement No. 27, *Accounting for Pensions by State and Local Government Employers***

Issues Resolution Memo No. 27.3.3

(Issued: October 31, 2007)

Legal Financial Responsibility of the Department of Energy (DOE) for all Pension Costs Associated with Current or Former University of California Employees Who Work, or Worked, at the Lawrence Berkeley National (LBNL) Laboratory

Background

UC provides pension benefits to retired UC employees. Employees working at the DOE laboratories are technically UC employees as long as the Prime UC/DOE contract is in place.

Retired employees who work at LBNL while managed by UC receive pension benefits under the University of California Retirement Plan (UCRP), a defined benefit plan. When the UCRP previously required contributions, the DOE provided funding to UC on a monthly basis for the cost incurred to provide these benefits using the identical contribution rate established for all of the UC.

The University currently manages the LBNL for the DOE through the Prime contract. In accordance with the contract with the DOE, the UCRP retains all of the pension obligations associated with all current and former LBNL employees (LBNL segment liabilities).

Under the terms of the contract, UCRP retains assets to pay for the LBNL segment liabilities to satisfy the future obligations to the LBNL retirees. The assets remain within the UCRP, although the portfolio is segmented so the assets and operating activities (income, realized or unrealized gains and losses, beneficiary payments and expenses) within the UCRP associated with LBNL retirees are tracked separately (LBNL segment assets).

An actuarial report is prepared annually to track the status of the LBNL segment of the UCRP, separate from the actuarial report prepared for the total UCRP. The separate LBNL segment actuarial report provides the basis for the measurement of the funded status of the LBNL segment, for which the DOE is financially responsible. Since the contract to manage LBNL for the DOE is an active contract, the DOE will make contributions to the UCRP based upon a percentage of LBNL salaries consistent with the rest of the University.

Define Issues

The Governmental Accounting Standards Board (GASB) requires the UC to record the Annual Pension Cost (APC) as an expense and also a liability to UCRP, under certain circumstances. In the future, UC's financial statements may, depending on the level of annual funding and actuarial reports, include an APC and NPO for the UCRP. The financial accounting and reporting of the University's application of GASB Statement No. 27, *Accounting for Pensions by State and Local Governmental Employers* is dependent on a determination of whether the DOE is ultimately the financially responsible party for all pension costs specifically related to former employees who worked at LBNL. A similar examination of both the LANL and LLNL contracts resulted in a determination that the DOE was financially responsible for pension costs and liabilities at those locations, notwithstanding the fact that the costs may be funded in the future. See IRM 27.3.1 and 27.3.2.

Conclusion

UC's conclusion is, under the terms of the Prime Contract, the DOE is legally the ultimate financially responsible party for all pension costs specifically related to current and former employees who work, or worked, at LBNL based upon the following:

- The UC/DOE Prime Contract DE-AC02-05CH11231 (Contract 31) obligates the DOE to pay for UCRP pension benefits incurred during the LBNL employee's course of employment at LBNL while managed by the University, and
- DOE/NNSA's obligation under the contract's pension provisions is not, and should not be thought to be, ambiguous; what is ambiguous is the methodology for anticipating and minimizing any shortfall before the last LBNL segment beneficiary dies and the actual total cost is known, and
- The DOE policies state they are obligated to provide future funding for pension liabilities associated with retired employees who worked at DOE laboratories. The DOE's internal regulations require contracting officers to assure that subsequent to any contract termination or expiration, benefit continuation will be continued for those who have earned such benefits, and
- The University and DOE clarified DOE's obligations with respect to pension and annuitant health benefits in the executed acceptance of the University's offer in response to the DOE's Request For Proposal to manage and operate LBNL, and
- The DOE acknowledges their obligation to provide future funding for contractor's postemployment benefits liabilities in their audited (KPMG) financial statements by recording the liability to the contractor and through related footnote disclosures, and
- GAO Audit Report 04-539 issued in April 2004 reinforces the obligation of the DOE to contractors regarding postemployment benefits, and
- UC's financial statements would be misleading to a user if they included any APC and NPO associated with this specific group of active or retired LBNL employees without including the offsetting receivable from the DOE to satisfy these future liabilities.

Recommended Approach

This IRM concludes on the legal financial responsibility and is not a discussion of the financial accounting and reporting that results from this conclusion.

See IRM 27.3 for a further discussion of the accounting and reporting for the contract termination agreement and the DOE's legal responsibility for any pension shortfalls associated with the LBNL segment of the UCRP.

Authoritative Guidance

The UCRP is a defined pension plan and therefore should follow the requirements outlined in GASB Statement No. 27, *Accounting for Pensions by State and Local Governmental Employers*. However, circumstances are complicated by the unique nature of the DOE's contractual responsibility to the University for the financial obligations for a certain segment of the UCRP. The University is the plan sponsor of the UCRP.

Supporting Documentation

Prime Contract 31

Contract 31 establishes the financial responsibility for the continuing pension benefit obligations associated with current and former LBNL employees. The prime contracts can be located on the web at: <http://labs.ucop.edu/internet/comix/> and the pertinent section H.41 – Pension Plan is shown in Appendix 1.

Paragraph (c) 1 of section H.41 of the Prime Contract states, “Contributions to the plan will be based on the actuarial valuation for the Plan and will be approved by the Contractor's Plan Trustees (The Regents of the University of California).”

Paragraph (c) 2 of section H.41 of the Prime Contract states,....”DOE agrees to continue to fund for the Contract terms, as extended, the employer cost of UCRP for Contract employees at the contribution rates established from time to time by the Contractor, subject to the following restriction: The DOE funded contribution shall not exceed the full funding limit as defined in the Internal Revenue Code, Section 412.”

Paragraph (b) (9) of section H.41 of the Prime Contract states, “All plan provisions of the UCRP are applicable to all eligible employees of the Contractor, including those employees at a DOE Laboratory and, as such, a single contribution rate, expressed as a percentage of covered compensation, is calculated for the Plan. This single rate is to be applied to all members of the Plan in order to determine the contribution, if any. For purposes of assessing the liabilities of the DOE segment of the Plan as described in paragraphs (e), (f) and (g), the DOE will have no liabilities to the Plan beyond that associated with Laboratory employees who are members of the Plan.”

Subsection (f) of section H.41 of the Prime Contract discusses contract termination and selection of a successor contractor within the context of transferring assets and liabilities to a successor plan. In paragraph (f) (3) (ii).... “Under a succession plan acceptable to the DOE and which

fulfills all of the Contractor's fiduciary responsibilities under UCRP, and which further assumes UCRP liabilities for transferred Contract employees, the Contractor agrees to transfer to the trustees of such successor plan an amount equal to the contract service assets as determined in subparagraph (f) (2) above."

Subsection (g) of section H.41 of the Prime Contract discusses the DOE's financial responsibility for the cost of the purchase of annuities in the event of UCRP plan termination. In paragraph (g) (2)... "The Contractor may satisfy plan liabilities to plan members by the purchase of annuities through competitive bidding on the open annuity market or through the payment of lump sums. Any competitive annuity bid process must include at least five bidders, if possible, who satisfy the criteria listed in United States Department of Labor Interpretive Bulletin 95-1. The final selection of insurance company(ies) shall be based upon the bids of the qualifying companies, in conjunction with the assessed quality of the annuity provider(s). Lump sums shall be calculated in accordance with the terms of the UCRP."

Subsection (i) of section H.41 of the Prime Contract discusses the DOE's post-contract responsibilities for pension plans as follows:

"If this contract expires or terminates without a follow-on contract, notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this contract, including but not limited to the clause of the contract entitled "Termination", the following actions shall occur:

1. The Contractor shall continue as plan sponsor of all existing and follow-on pension and welfare benefit plans covering site personnel with responsibility for management and administration of the plans, as directed by DOE, at DOE's sole discretion.
2. During the final 12 months of this contract if the parties have not reached agreement on these matters, the Contracting Officer shall provide written direction regarding the provision of post-contract pension and welfare benefits.
3. Notwithstanding termination for convenience or default, the contract may be extended as appropriate for purposes deemed necessary by the Contracting Officer, including, but not limited to, obligating funds to pay the Contractor for costs incurred for the Contractor's existing and, if applicable, follow-on, site pension and welfare benefit plans. Such costs shall continue to be allowable in accordance with applicable laws and regulations.
4. DOE-approved pension and welfare plan contributions and plan administration costs, and pension plan asset management costs, will continue to be allowable and fully reimbursed under this contract, unless other arrangements have been approved by the Contracting Officer."

Subsection (h) on the topic of Financial Requirements is as follows:

1. Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination under paragraph (g) above shall accrue interest from the effective date of termination until the date of payment or transfer.

DOE/NNSA's obligation under the contract's pension provisions is not, and should not be thought to be, ambiguous; what is ambiguous is the methodology for anticipating and minimizing any shortfall before the last LBNL segment beneficiary dies and the actual total cost is known.

There are two very separate issues associated with the payment of a pension shortfall:

1. The legal obligation to pay, and
2. The process for determining the timing of payments.

The subject of this document is focused on the former for purposes of supporting documentation for a receivable from the DOE/NNSA for any pension shortfall.

The contract clearly gives the University a receivable; whether the assets on hand make that receivable \$0 or \$x is what we are defining with DOE/NNSA. There is no negotiating with DOE over their obligation - all of the circumstances giving rise to the obligation exists at the end of each fiscal year. DOE/NNSA agreed in the contract that allowable costs incurred in termination of the contract (including pension costs) which have not been previously paid under the contract are:

1. Payable by DOE without regard to the funds obligated to the contract prior to expiration,
2. Payable from any funds appropriated to DOE which could be lawfully used to make such payments, and
3. If no funds were currently available, DOE would make it best efforts to obtain appropriated funds for that purpose.

(See I.104 (b) (2) "Obligation of Funds" in Appendix 2)

[Note: The general allowability of cost rules for the University prime contract are found in I.182 (j) "Payments and Advances" in Appendix 4, and H.4 "Advance Understanding of Costs and Expenses" in Appendix 5. Costs which are presented after contract termination relating back to obligations incurred during contract performance are also allowable costs of the contract under I.88 (h)(1) "Termination" in Appendix 3, and under I.104 (b) (2) cited above are payable without regard to whether funds are currently obligated to the prime contract.]

The DOE policies state that they are responsible for providing future funding. The DOE's internal regulations require contracting officers to assure that subsequent to any contract termination or expiration, benefit continuation will be continued for those who have earned such benefits.

DOE policies demonstrate the continuing obligation of the DOE to the UC to provide future funding sufficient to offset the related liability.

The DOE issues "Directives" that provide for how DOE contracting officers must view contracts with ME contractors, such as UC. There is a DOE Order 350.1 issued on September 30, 1996 titled "Contractor Human Resource Management ME Programs."

The objective of DOE Order 350.1 is to “ensure that contractors that perform work under cost reimbursement contracts develop employee benefit programs that will attract and retain competent and productive employees and that facilitate the achievement of objectives and business strategies in support of DOE missions in a cost effective manner.” Contracting Officers must approve of contractor’s employee benefit programs as an ongoing part of their responsibility. UC’s employee benefit programs, including pensions, have been approved by the DOE.

Under section 4 (b) (14) of DOE Order 350.1, describing the responsibilities of contracting officers, it states that they must, “assure that subsequent to contract termination or expiration, benefit continuation will be provided for those who earned such benefits, according to the approved benefit plans, on a funding basis most reasonable to the department (DOE). Among acceptable arrangements for these provisions are paying a sum to the outgoing contractor to continue its liability, paying a third party such as an insurer or other contractor, to guarantee benefit payments, or continuing benefit payment obligation with the replacement contractor.”

The Department Of Energy’s Order 350.1 can be found on the web at <http://www.directives.doe.gov/pdfs/doe/doetext/neword/350/o3501c1.pdf>

The University and DOE clarified DOE’s obligations with respect to pension and annuitant health benefits the executed acceptance of the University’s offer submitted in response to the DOE’s Request For Proposal to manage and operate LBNL.

The image of the executed offer and acceptance is attached as Appendix 6. The relevant text relating to pension obligations is as follows:

In order to assure it can meet DOE’s programmatic objectives for LBNL, the University makes the following clarifications and understandings that, pursuant to ... H.41:

- (i) DOE intends to be contractually responsible for the costs of pension, other post retirement benefits and other benefits when earned (subject to DOE approved plan provisions) regardless of when the benefits are paid;
- (ii) if DOE determines that any UC pension or welfare benefit plan is not acceptable or is determined to be an unreasonable or otherwise unallowable cost, the University may create a separate site-specific plan;
- (iii) DOE intends to provide funds for LBNL pension benefits in the event of a pension plan shortfall following termination of the contract; and

* * *

Based on the University’s responses on February 23, 2005, to DOE’s February 22, 2005 clarification questions regarding the University’s ... clarifications and understandings above, and subject to the terms and conditions of this contract, the Parties are in agreement as follows:

- (a) The use of the phrase “when earned” in item (i) above does not mean or imply a change in how DOE reimburses the University for pension, other post retirement and other benefits; i.e., DOE will continue to reimburse the University on a pay-

as-you-go basis. Furthermore, DOE has no objection to the University including such costs as liabilities without receiving reimbursement, i.e., account receivables, so long as the University can do so under all applicable financial and accounting standards.

- (b) With respect to item (ii) above, nothing in this contract precludes the University from creating a separate site-specific pension or welfare benefit plan. In such event, the parties agree to negotiate in good faith over any necessary modifications to the terms and conditions of this contract to effectuate such change.
- (c) With respect to item (iii) above, the University is not requesting DOE to make a lump sum payment for LBNL pension benefits in the event of a pension plan shortfall. The University expects payment for these benefits as they have received them in the past, i.e., on a pay-as-you-go basis.

* * *

As is readily apparent from this text, DOE acknowledges its future obligations and only retains some options regarding the timing and manner of meeting those obligations.

The DOE acknowledges their obligation to provide future funding in their audited (KPMG) financial statements by recording the liability to the contractor and through related footnote disclosures

The DOE's September 30, 2006 financial statements, audited by KPMG, includes a liability to contractors for pension benefits associated with the contractor's employees working at DOE laboratories.

In addition, there is footnote language that states,

- "Most of the department's contractors have defined benefit pension plans under which they promise to pay specified benefits to their employees, such as a percentage of the final average pay for each year of service. The Department's costs under the contracts includes reimbursement of annual contractor contributions to these pension plans....Since the Department approves the contractor's pension and postretirement benefit plans and is ultimately responsible for the plans, the responsibility for any related liabilities rests with the Department."
- "The Department follows SFAS No. 87, Employers' Accounting for Pensions, for contractor employees for whom the Department has a continuing pension obligation."

The Department of Energy financial statements can be found on the web at (<http://www.cfo.doe.gov/progliaison/par2006fr2.pdf>). Refer to the consolidated balance sheet on page 154 and footnote 15, shown on pages 27 through 30 (financial report pages are 175 through 178).

GAO Audit Report 04-539 issued in April 2004 reinforces the obligation of the DOE to contractors regarding postemployment benefits

The GAO audit report reinforces that “the DOE reimburses contractor payments for employee compensation, including postretirement benefits as authorized by applicable regulations and each contractor’s operating agreement.” The applicable regulation is DOE Order 350.1 as discussed above. Employee benefit programs are approved as part of the operating agreement with the DOE.

DOE officials are on record stating that the continuation of postretirement health benefits is necessary to reward former contractor employees and to attract and retain future contractors and contractor employees. Therefore, in this regard, DOE Order 350.1 provides that “when operations at the DOE facility are terminated and no further work is to be completed, pension and postretirement health benefit continuation will be provided for those contractor employees who earned retirement benefits in these plans.” Further, according to the audit report, “it is the DOE’s policy in these situations that future postretirement benefits earned by contractor employees may be satisfied by the outgoing contractor in one of two ways. Under the first option, the contractor can request reimbursement from the DOE for the immediate settlement of outstanding benefit obligations, such as through the purchase of insurance contracts. Under the second option, the contractor may facilitate the continuation of the current benefit program and seek DOE reimbursement as postretirement benefit payments are made to retirees. The outgoing contractor can achieve the latter option through continuing to sponsor current postretirement benefit plans or through the transfer of plan administration to another party.

GAO Report 04-539 can be found on the web at <http://www.gao.gov/> Enter “04-539” in the *Key Word or Report Number* field in the upper right hand corner.

UC’s financial statements would be misleading to a user if they included a liability for the postemployment liabilities associated this specific group of retired employees without including the offsetting receivable from the DOE to satisfy these future liabilities

Finally, it is reasonable to take the view that a receivable from the DOE to offset a LBNL segment NPO should be recorded from the perspective of whether UC’s financial position would be “presented fairly.”

The discussion above describes the fact that the contract requires and DOE policies state they are obligated to provide continuing funding for pension benefits. A receivable that represents that obligation for a LBNL segment NPO would result in UC financial position being presented fairly.

Next Steps—Required Actions

Responsibility (C, OP)	Required Completion Date	Action Item/Task
OP	June, 2007	Discuss UC’s approach with PwC.
OP	June, 2007	Finalize UC’s approach
OP	March-April, 2007	Complete IRM outlining UC’s accounting and reporting

Appendix 1: H.41 Pension Plan

- (a) The following stipulations apply, as appropriate, to the University of California Retirement Plan (UCRP) which covers University of California employees working under contracts at DOE-owned and Contractor-operated facilities. All assets and liabilities associated with employee contributions to the Contractor's Defined Contribution Plan and the Tax-Deferred 403(b) Plan shall be excluded from these principles and procedures.
- (b) Basic requirements.
- (1) DOE shall be notified prospectively of each change to the UCRP that could have a significant impact on current or future Departmental funding or liabilities; including either:
 - (i) Any change to a benefit, right or feature of the Plan or any change to a funding method or assumption, or
 - (ii) Any change that requires the approval of the Regents of the University of California.
 - (2) Prospective notice will be provided to the DOE for each newly adopted pension plan change requiring prospective notice as described in subparagraph (b)(1)(i) or (ii) above, including any changes to non-DOE-reimbursed segments of commingled pension plans.
 - (3) For purposes of this clause, prospective notice shall mean written notice, including a copy of the proposed change, at least thirty (30) days in advance of approval of each change to the UCRP by the Regents of the University as trustees of the pension plan.
 - (4) The pension plan shall be submitted to an annual, full-scope audit by an outside independent auditor. The Contractor shall provide a report of such audit to DOE within nine months after the last day of the current plan year to which the audit applies.
 - (5) The Contractor shall maintain a separate annual accounting of liabilities and assets attributable to each Laboratory. Market value of assets on an accrual basis at the beginning of a plan year shall equal the assets at market value on an accrual basis at the end of the prior year based on the separate annual accounting of the prior plan year. The procedures for annual accounting of contributions to UCRP are for each plan year (July 1 through June 30), the Contractor will provide an annual accounting of assets associated with DOE-funded employer contributions and employee contributions under Contract No. DE-AC03-76SF00098, as follows:
 - (i) Market value of assets at the beginning of a plan year;
 - (ii) (A) Employer contributions made during a plan year, less the employer contributions transferred to the Social Security Administration on

behalf of contract employee members of UCRP who elected Social Security coverage in 1976 or 1977; and

- (B) Employee contributions made during a plan year, less the employee contributions transferred to the Social Security Administration on behalf of contract employee members of UCRP who elected Social Security coverage in 1976 or 1977.
 - (iii) The dollar amount of investment income from applying the rate of return on the accrual-basis market value of UCRP assets to subparagraphs (b)(5)(i), (ii), (iv) and (v);
 - (iv) Benefits disbursed on account of Contract employees during the plan year, including return of accumulated employee contributions;
 - (v) Administrative expenses paid from the trust shall be allocated to the Laboratory in the same proportion that the market value of assets assigned to the Laboratory segment bears to the market value of the total asset fund as of the beginning of the plan year. However, there may be situations agreed to by the DOE where specific expenses would directly be charged to each Laboratory in addition to the proportionate share of expenses; and
 - (vi) Market value of assets at the end of the plan year = (b)(5)(i) + (ii) + (iii) - (iv) - (v). The annual accounting shall include the market value of such assets as of June 30, 1991, and as of the end of each plan year thereafter.
- (6) "Contract Service" means work performed within the scope of work under this contract or predecessor contract.
 - (7) "Contract service assets" means the accrual basis market value given by the accounting which is referred to in subparagraph (b)(5).
 - (8) "Disaffiliation" means the cessation of the contractual relationship between the Contractor and the Department of Energy with respect to LBNL.
 - (9) All plan provisions of the UCRP are applicable to all eligible employees of the Contractor, including those employed at the Laboratory and, as such, a single contribution rate, expressed as a percentage of covered compensation, is calculated for the Plan. This single rate is to be applied to all members of the Plan in order to determine the contribution, if any. For purposes of assessing the liabilities of the DOE segment of the Plan as described in paragraphs (e), (f), and (g), the DOE will have no liabilities to the Plan beyond that associated with Laboratory employees who are members of the Plan for work under this contract.
 - (10) The DOE will be given prospective notice of any changes in administration costs of five percent or more, and the reason for any such changes. Changes in administration costs resulting directly from normal inflation in administration costs or per specific DOE requests do not require notice.
 - (11) If and when the funded status (measured by dividing the actuarial value of assets by the entry age liability of UCRP), reaches 150 percent, the President of the

University will initiate a review of the surplus situation and provide to DOE a copy of the Contractor's recommendations to bring the fund into conformity with the long-term needs of the Plan. Any recommendations by the Contractor for the disposition of the Plan assets in connection with a Plan termination or spin-off will be consistent with the then applicable federal and state laws relating to qualified pension plans and ensure equitable distribution of excess Plan assets to DOE and the University-reimbursed Plan segments as provided in this clause.

- (12) The DOE will pay costs for any special retirement and/or actuarial analysis that it requests during the period of the contract.
- (13) DOE has the right to take any action it deems appropriate and consistent with applicable law with reference to the pension plan.
- (14) The Contractor shall provide notice to the Contracting Officer of Plan participants transferring from non-LBNL operations to LBNL operations, and vice-versa, on a quarterly basis with such information and as directed by the Contracting Officer.

(c) Funding requirements.

- (1) Contributions to the Plan will be based on the actuarial valuation for the Plan and will be approved by the Contractor's Plan Trustees (The Regents of the University of California).
- (2) DOE agrees to continue to fund for the Contract term(s), as extended, the employer cost of UCRP for Contract employees at the contribution rates established from time to time by Contractor, subject to the following restriction: The DOE funded contribution shall not exceed the full funding limit as defined in the Internal Revenue Code, Section 412.
- (3) The DOE funding policy is intended to be congruent with the basic objectives of the cost accounting standards (CAS) and will generally result in funding consistent with the CAS. If this policy causes a temporary, technical inconsistency with the CAS, the Contractor shall immediately notify the cognizant Contracting Officer and CH's Chief Financial Officer. Contractors have recourse to the cost principles found at FAR 31.203, 31.205-6, and 31.205-10 and shall avoid penalties on that basis.
- (4) If members of each Laboratory managed by the Contractor for DOE transfer from the Contractor's private operations to the DOE Laboratories, or vice versa, appropriate annual adjustments shall be made to the pension fund or segments' assets and liabilities.

(d) Reporting requirements for designated contracts. The following reports shall be submitted within nine months of the last day of the current plan year to DOE for each Laboratory.

- (1) Any annual actuarial valuation report which includes information in the annual separate actuarial valuations for each Laboratory managed by the Contractor for DOE which DOE may reasonably request. DOE shall pay the cost of all separate valuations. At a minimum, these reports shall include: an itemized cashflow; the

aggregate covered compensation; a distribution of active members by age, service, and salary; separate distributions of retirees and terminated vested members by age, benefit amount, and time expired since retirement or separation; a brief description of each amortization base, if any, and its date, original amount, and annual payment; an itemization of the changes in the numbers of actives, retirees and terminated vested members during the plan year; the rate of interest currently credited to employee contributions; a statement of the Financial Accounting Standards (FAS) 35 liabilities; a statement of the current liability under Internal Revenue Code Section 412; a development of the total actuarial gain or loss; a statement of actuarial assumptions and methods; calculation of the assets of each Laboratory; calculation of the actuarial asset value; calculation of contribution requirements; and a statement of the changes, if any, in benefits, assumptions or methods since the last report.

- (2) A copy of the Financial Accounting Standards Board Statement 87 report prepared each year to satisfy the expense-reporting requirement of the Office of Management and Budget.
 - (3) In order to report the funded status (surplus or deficit) of each Laboratory's portion of UCRP to the DOE, the Contractor will measure the liabilities using the Entry Age Normal actuarial method and the Actuarial Value of Assets as defined in the valuation report indicated in subparagraph (d)(1) above.
- (e) Terminating operations. When operations at a DOE Laboratory are terminated and no further work is to occur under this contract, the following rules shall apply:
- (1) No further benefits for service shall accrue after the Contract termination date, or such earlier date as agreed to by the DOE and the Contractor.
 - (2) The Contractor shall return the DOE portion of the UCRP assets [as defined herein below] by means of a (1) spin-off and termination of the spun-off plan and reversion pursuant to IRC Section 414(1) and ERISA Section 4044, (2) spin off and plan merger pursuant to IRC 414(1), or (3) otherwise transferred at DOE's direction at DOE's sole discretion subject to applicable law. In the case of (2) above, the merger shall be a merger of all DOE assets and all DOE liabilities with another DOE Contractor's DOE-site pension plan.
 - (3) Procedures with respect to the spin-off and reversion.
 - (i) For purposes of spin-off, all Contract Service active liabilities for the Laboratory's UCRP members and all Contract Service inactive liabilities for the Laboratory's UCRP members shall be valued using the UCRP plan provisions, actuarial assumptions, and actuarial cost methods that were used to prepare that UCRP actuarial valuation which is most recent as of the effective date of the spin-off and Contract Service to date of spin-off. For purposes of this subparagraph (e)(3), the aforementioned valuation of the Contract Service inactive liabilities shall be known as "B". The UCRP shall retain full and exclusive responsibility for the Contract Service inactive liabilities. For this purpose, "inactive" shall refer to those vested UCRP members who have earned Contract Service and who do not become participants in the spun-off plan.

- (ii) Assets transferring to the plan that is spun off shall equal A-B for which A is the value of assets on the effective date of spin-off that is provided by the formula in subparagraph (b)(5) and B is as defined in subparagraph (e)(3)(i), above. Any delay in transfer of assets shall augment the amount A-B by interest on that amount in accordance with the clause of this contract entitled “Interest”, as of the effective date of spin-off. The sponsor of the spun-off plan shall have full and exclusive responsibility for the Contract Service active liabilities.

- (iii) The Parties agree that any disposition of Contract Service assets or transfer of liabilities upon a spin-off shall be consistent with the then applicable federal and state laws relating to qualified defined benefit pension plans and shall be subject to obtaining such rulings and/or approvals from cognizant federal and state agencies as may be required by law or deemed prudent by the Contractor or DOE.
 - (A) When a Spin-off Plan has been established, UCRP shall retain the liabilities associated with pensioners, members receiving UCRP disability income, terminated vested participants, survivors, contract employees who are retained by the Contractor, and anyone else who is not an active employee under the Spin-off Plan.

 - (B) Under a Spin-off Plan acceptable to the DOE in its sole discretion and which fulfills all of the Contractor’s fiduciary responsibilities under applicable law, and which further assumes UCRP liabilities for transferred contract employees, the Contractor agrees to transfer to the trustees of the Spin-off Plan an amount equal to the Contract service assets to be transferred as determined above. Such amount shall be transferred as investment holdings of the UCRP, plus any necessary United States Currency, or, by mutual agreement of the Parties, the total amount may be transferred as United States Currency. Agreement by the DOE and Contractor will not be unreasonably withheld.
 - 1. If the asset transfer to the Spin-off Plan is made in the form of investment holdings, such holdings shall include cash, equity securities, and fixed income securities, but shall exclude any investment holding (and earnings thereon) acquired from the effective date of the spin-off. Such assets shall be allocated on a pro-rated basis, with proration for fixed income assets based on rating and sector classification. The pro-rata allocation shall be the ratio of (A) to (B) where, (A) is the Contract service assets referred to in subparagraph (e)(3)(ii) above; and (B) is the total assets of the Retirement Fund of UCRP at market value as of the effective date of disaffiliation. If transfer of assets cannot be accomplished on the effective date of disaffiliation, assets shall be converted on that date to U.S. Currency and interest shall be credited on those assets as provided in subparagraph (e)(3)(ii) above.

2. The Contractor will transfer assets at a rate at least sufficient to meet the cashflow requirement of transferred employees who go into benefit status under the Spin-off Plan.
- (iv) Subsequent to a termination of the Spin-off Plan, the Contractor shall return the remaining assets (less any tax or other liabilities imposed upon the Contractor because of the receipt of such assets) to DOE.

The Contractor shall not terminate any DOE-reimbursed benefit plan without the DOE's approval. It is the intention of the DOE not to entertain any enhancements in these programs after the Contractor announces the intention not to renew the contract.

- (f) Contract termination and selection of a successor contractor. Should another contractor, including any contractual entity that includes the University of California, replace the Contractor, the following become requirements:
 - (1) Liabilities for present and future benefits of Contract employees in the event there is a successor plan. The liabilities as of the effective date of disaffiliation for members shall be calculated by using the UCRP Plan provisions, actuarial assumptions, and actuarial cost methods as then in effect. Only persons employed by the successor contractor shall be covered by the successor pension plan.
 - (2) Contract service assets in the event there is a successor pension plan.
 - (i) For purposes of disaffiliation as used in subparagraphs (e) and (f) herein, all Contract Service active liabilities for the Laboratory's UCRP members and all Contract Service inactive liabilities for the Laboratory's UCRP members shall be valued using the UCRP plan provisions, actuarial assumptions, and actuarial cost methods that were used to prepare that UCRP actuarial valuation which is most recent as of the effective date of disaffiliation and Contract Service to date of disaffiliation. For purposes of subparagraph (f)(2), the aforementioned valuation of the Contract Service inactive liabilities shall be known as B. The UCRP shall retain full and exclusive responsibility for the Contract Service inactive liabilities. For purposes of subparagraph (f)(2), "inactive" shall refer to those vested UCRP members who have earned Contract Service and who do not become participants in a plan sponsored by the successor Contractor.
 - (ii) Assets transferring to the plan that is spun off shall equal A-B for which A is the value of assets on the date of disaffiliation that is provided by the formula in subparagraph (b)(5) and B is as defined in subparagraph (f)(2)(i), above. Any delay in transfer of assets shall augment the amount A-B by interest on that amount in accordance with the clause of this contract entitled "Interest", as of the effective date of disaffiliation. The successor Contractor shall have full and exclusive responsibility for the Contract Service active liabilities.

- (iii) Notwithstanding the provisions of this paragraph (f), the Parties further agree to consider the desirability of covering pensioners, survivors, UCRP disability recipients, and terminated vested and nonvested members under a successor plan.
- (3) Disposition of contract service assets and liabilities. The Parties agree that any disposition of contract service assets or transfer of liabilities upon Contract termination shall be consistent with the then applicable federal and state laws relating to qualified defined benefit pension plans and shall be subject to obtaining such rulings and/or approvals from cognizant

Federal and State agencies as may be required by law or deemed prudent by the Contractor or DOE.

- (i) Retention of assets and liabilities. When a successor pension plan has been established by a successor Contractor, UCRP shall retain the liabilities associated with pensioners, survivors, UCRP disability recipients, and terminated vested and nonvested members and active members who are retained by the Contractor as determined in subparagraph (f)(1) above.
- (ii) Transfer of assets and liabilities to successor pension plan. Under a successor pension plan acceptable to the DOE and which fulfills all of the Contractor's fiduciary responsibilities under applicable law, and which further assumes UCRP liabilities for transferred Contract employees, the Contractor agrees to transfer to the trustees of such successor plan an amount equal to the contract service assets as determined in subparagraph (f)(2) above. Such amount shall be transferred as investment holdings of the UCRP, plus any necessary United States Currency, or, by mutual agreement of the Parties, the total amount may be transferred as United States Currency. Agreement by the DOE and Contractor will not be unreasonably withheld.
 - (A) If the asset transfer to the successor Contractor's trust is made in the form of investment holdings, such holdings shall include cash, equity securities and fixed income securities, but shall exclude investment holdings (and earnings thereon) acquired after the effective date of disaffiliation. Such assets shall be allocated on a pro-rated basis, with proration for fixed income assets based on rating and sector classification. The pro-rata allocation shall be the ratio of (A) to (B) where, (A) is the contract service assets referred to in subparagraph (f)(2) above and (B) is the total assets of the Retirement Fund of UCRP at market value as of the effective date of disaffiliation. If transfer of assets cannot be accomplished on the effective date of disaffiliation, assets shall be converted on that date to U.S. Currency and interest then shall be credited on those assets as provided in (f)(2)(ii).
 - (B) The Contractor will transfer assets at a rate at least sufficient to meet the cashflow requirement of transferred employees who go into benefit status under the successor plan.

- (C) If the transfer is made as United States Currency, the transfer shall be increased to include interest on the amount at the rate specified in the clause of this contract entitled “Interest”.

(g) UCRP plan termination.

- (1) In the unlikely event of termination of the entire UCRP, the Contractor shall not terminate any pension plan (commingled or site-specific) without notifying the Department at least 60 days prior to the scheduled date of plan termination, or if earlier, 60 days before plan members are notified of the plan termination.
- (2) The Contractor may satisfy plan liabilities to all plan members by the purchase of annuities through competitive bidding on the open annuity market or through the payment of lump sums. Any competitive annuity bid process must include at least five bidders, if possible, who satisfy the criteria listed in the United States Department of Labor Interpretive Bulletin 95-1. The final selection of insurance company(ies) shall be based upon a review of the bids of the qualifying companies, along with a prudent assessment of the quality of the annuity providers. The Contractor may also satisfy plan liabilities to plan members through lump sum distributions. Lump sum distributions shall be calculated in accordance with the terms of the UCRP.
- (3) Notwithstanding the provisions in subparagraph (g)(2), if the DOE has a dispute with the Contractor’s selection of an annuity provider(s) or the assumptions or methods for determining the lump sum distributions, the DOE may negotiate with the Contractor an alternative that would resolve its concerns.
- (4) DOE-reimbursed assets which are in excess of the DOE liability shall revert to DOE with interest. Interest shall accrue from the effective date of plan termination at the rate specified in the clause of this contract entitled “Interest”.

(h) Financial requirement.

- (1) Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination under paragraph (g) above shall accrue interest from the effective date of termination until the date of payment or transfer.
- (2) Special programs. The Contractor shall advise DOE in advance of each early-out program, window benefit, disability program, plan-loan feature, employee contribution refund, asset reversion, or incidental benefit. Any UCRP retirement system programs proposal that is Laboratory specific and that would increase the cost of the Contract beyond that approved by the Contractor for Contractor employees, reduce plan surplus, or increase plan liabilities shall require advance approval by the Contracting Officer and the Contractor.

(i) Post-Contract Responsibilities for Pension and Benefit Plans

If this contract expires or terminates without a follow-on contract, notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this contract, including but not limited to the clause of the contract entitled "Termination", the following actions shall occur:

- (1) The Contractor shall continue as plan sponsor of all existing and follow-on pension and welfare benefit plans covering site personnel with responsibility for management and administration of the plans, as directed by DOE, at DOE's sole discretion.
- (2) During the final 12 months of this contract if the parties have not reached agreement on these matters, the Contracting Officer shall provide written direction regarding the provision of post-contract pension and welfare benefits.
- (3) Notwithstanding termination for convenience or default, the contract may be extended as appropriate for purposes deemed necessary by the Contracting Officer, including, but not limited to, obligating funds to pay the Contractor for costs incurred for the Contractor's existing and, if applicable, follow-on, site pension and welfare benefit plans. Such costs shall continue to be allowable in accordance with applicable laws and regulations
- (4) DOE-approved pension and welfare plan contributions and plan administration costs, and pension plan asset management costs, will continue to be allowable and fully reimbursed under this contract, unless other arrangements have been approved by the Contracting Officer.

Appendix 2: I.104 DEAR 970.5232-4 Obligation of Funds (Dec 2000)

- (a) Obligation of funds. The amount presently obligated by the Government with respect to this contract is \$409,408,131.75 through modification A007. (The funds obligated by this action represent a net funding change of an increase of \$21,911,994.30 in Operating/Capital/Reimbursable funds, and an increase of \$ -0- in Plant Construction.) Such amount may be increased unilaterally by DOE by written notice to the contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the contractor, 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. Nothing in this paragraph is to be construed as authorizing the contractor to exceed limitations stated in financial plans established by DOE and furnished to the contractor from time to time under this contract.
- (b) Limitation on payment by the Government. Except as otherwise provided in this contract and except for costs which may be incurred by the contractor pursuant to the Termination clause of this contract or costs of claims allowable under the contract occurring after completion or termination and not released by the contractor at the time of financial settlement of the contract in accordance with the clause entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the contractor's fee and any negotiated fixed amount. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of:
- (1) Collections accruing to the contractor in connection with the work under this contract and 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
 - (2) Other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.
- (c) Notices--Contractor excused from further performance. The contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), plus the contractor's best estimate of collections to be received and available during the 45 day period hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only 45 days and to cover the contractor's unpaid fee and any negotiated fixed amounts, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), less the amount of the contractor's fee then earned but not paid and any negotiated fixed amounts, is in the contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this

contract, the contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the Termination clause of this contract.

- (d) Financial plans; cost and encumbrance limitations. In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The contractor agrees
 - (1) to comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives,
 - (2) to comply with other requirements of such plans and directives, and
 - (3) to notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.
- (e) Government's right to terminate not affected. The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the Termination clause of this contract.

**Appendix 3: I.88 FAR 52.249-6 Termination (Cost-Reimbursement) (May 2004)
Modified by DEAR 970.4905-1**

- (a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if --
 - (1) The Contracting Officer determines that a termination is in the Government's interest; or
 - (2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.
- (c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
 - (6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government --
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;

- (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and
 - (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.
- (e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

- (g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.
- (h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:
 - (1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.
 - (2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (h)(1) of this clause.
 - (3) The reasonable costs of settlement of the work terminated, including--
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.
 - (4) A portion of the fee payable under the contract, determined as follows:
 - (i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.
 - (ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.
 - (5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) of this clause.

- (i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, as supplemented in Subpart 970.31 of the Department of Energy Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- (j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor --
 - (1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or
 - (2) The amount finally determined on an appeal.
- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted --
 - (1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;
 - (2) Any claim which the Government has against the Contractor under this contract; and
 - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.
- (l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.
- (m)
 - (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
 - (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
- (n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

**Appendix 4: I.102 DEAR 970.5232-2 Payments and Advances (Dec 2000)
Alternate II (Dec 2000), Alternate III (Dec 2000)**

- (a) Payment of Total available fee: Base Fee and Performance Fee. The base fee amount, if any, is payable in equal monthly installments. Total available fee amount earned is payable following the Government's Determination of Total Available Fee Amount Earned in accordance with the clause of this contract entitled "Total Available Fee: Base Fee Amount and Performance Fee Amount." Base fee amount and total available fee amount earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the contracting officer. The contracting officer may offset against any such fee payment the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this contract. No base fee amount or total available fee amount earned payment may be withdrawn against the payments cleared financing arrangement without the prior written approval of the contracting officer.
- (b) *Payments on Account of Allowable Costs.* The contracting officer and the contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the contracting officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from costs for payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accrual therefor may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.
- (c) *Special financial institution account--use.* All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix C. No part of the funds in the special financial institution account shall be commingled with any funds of the contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the contracting officer. If the contracting officer determines that the balance of such special financial institution account exceeds the contractor's current needs, the contractor shall promptly make such disposition of the excess as the contracting officer may direct.
- (d) *Title to funds advanced.* Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

- (e) *Financial settlement.* The Government shall promptly pay to the contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the contracting officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after:
- (1) Compliance by the contractor with DOE's patent clearance requirements, and
 - (2) The furnishing by the contractor of:
 - (i) An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;
 - (ii) A closing financial statement;
 - (iii) The accounting for Government-owned property required by the clause entitled "Property"; and
 - (iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:
 - (A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the contractor;
 - (B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the contractor on the date of the execution of the release; and provided further that the contractor gives notice of such claims in writing to the contracting officer promptly, but not more than one (1) year after the contractor's right of action first accrues. In addition, the contractor shall provide prompt notice to the contracting officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause I.98, DEAR 970.5228-1, "Insurance--Litigation and Claims");
 - (C) Claims for reimbursement of costs (other than expenses of the contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents; and
 - (D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.
 - (3) In arriving at the amount due the contractor under this clause, there shall be deducted,

- (i) Any claim which the Government may have against the contractor in connection with this contract, and
 - (ii) Deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.
- (f) *Claims.* Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the contracting officer shall prescribe.
- (g) *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.
- (h) *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, 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.
- (i) *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.
- (j) *Determining allowable costs.* The contracting officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the Department of Energy Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.
- (k) *Review and approval of costs incurred.* The contractor shall prepare and submit annually as of September 30, a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the Cost Statement. The contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended. DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the contractor in accordance with DOE accounting policies, but will not relieve the contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

Appendix 5: Clause H.4 Advance Understanding of Costs and Expenses

Allowable costs under this Contract shall be determined according to the requirements of DEAR 970.5232-2, Payments and Advances. For purposes of effective Contract implementation, certain items of cost are being specifically identified below as allowable and/or unallowable under this Contract to the extent indicated:

I. ITEMS OF ALLOWABLE COSTS:

- (a) Personnel costs in accordance with Appendix A attached to this contract.
- (b) Rentals and leases of land, buildings, and equipment owned by third parties, allowances in lieu of rental, charges associated therewith and costs of alteration, remodeling and restorations where such items are used in the performance of the contract, except that such rentals and leases directly chargeable to the contract shall be subject to such approval by the Contracting Officer as set forth in Part III, Attachment J.7, Appendix G.
- (c) Notwithstanding the provisions of FAR cost principle 31.205-44 (i), stipends and payments made to reimburse travel or other expenses of researchers and students who are not employed under this contract but are participating in research, educational or training activities under this contract to the extent such costs are incurred in connection with fellowship, international agreements, or other research, educational or training programs approved by the Contracting Officer.
- (d) Notwithstanding the provisions of FAR cost principle 31.205-44 (i), payments to educational institutions for tuition and fees, or institutional allowances, in connection with fellowship or other research, educational or training programs for researchers and students who are not employed under this contract.
- (e) Expenditures by the Contractor to reimburse other employers for payments (including, but not limited to, salaries) to or for the benefit of their employees loaned to the Contractor for and engaged in the performance of the Contractor's undertaking hereunder.
- (f) Costs incurred or expenditures made by the Contractor, as directed, approved or ratified by the Contracting Officer and not unallowable under any other provisions of this contract.

II. ITEMS OF UNALLOWABLE COSTS:

- (a) Premium Pay for wearing radiation-measuring devices for Laboratory and all-tier cost-type subcontract employees.
- (b) Home office expenses, whether direct or indirect, relating to activities of the Contractor, except as otherwise specifically agreed to in writing by the Contracting Officer.

**Appendix 6: UC and DOE executed Offer and Acceptance of Contract 31,
including clarifications on pension costs**

Provided on the following pages.

2. CONTRACT NO. E-AC02-05CH11231	3. SOLICITATION NO. DE-RP02-05CH11231	4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> (RFP)	5. DATE ISSUED 12/15/04	6. REQUISITION PURCHASE NO. 02-05CH11231.000
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7. ISSUED BY U.S. Department of Energy Chicago Office 9800 South Cass Avenue Argonne, Illinois 60439	CODE	8. ADDRESS OFFER TO (If other than Item 7) U.S. Department of Energy Chicago Office 9800 South Cass Avenue Argonne, Illinois 60439 ATTN: Tonja Stokes, BLDG. 201, Room 146
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NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder."

SOLICITATION

9. Sealed offers in original and *See Section L.14 copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried, in the depository located in **Refer to Part IV, Section L.14** until **4:30p.m.** (hour) local time **02/09/05** (date).

CAUTION-LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions in this solicitation.

10. FOR INFORMATION CALL	▶	A. NAME Tonja Stokes	B. TELEPHONE NO. (NO COLLECT CALLS) 630/252-2136	C. E-Mail Address: tonja.stokes@ch.doe.gov
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11. TABLE OF CONTENTS							
(x)	SEC.	DESCRIPTION	PAGE(S)	(x)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
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X	B	SUPPLIES OR SERVICES AND PRICES/COSTS	4	PART III - LIST OF DOCUMENTS, EXHIBITS, ATTACHMENTS			
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X	F	DELIVERIES OR PERFORMANCE	6	X	L	INSTRS., CONDS., NOTICES TO OFFERORS	104
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OFFER (Must be fully completed by Offeror)


NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within **175** calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

DISCOUNT FOR PROMPT PAYMENT N/A	▶	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %
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14. ACKNOWLEDGMENT OF AMENDMENTS <i>(The offeror acknowledges receipt of amendments to the Solicitation for offerors and related documents numbered and dated):</i>	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
	See Provision L.1(c)(4) and L.15(b)			

15A. NAME AND ADDRESS OF OFFEROR The Regents of the University of California 1111 Franklin Street Oakland, CA 94607-5206 DUNS # of Offeror: 00-398-5512	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print) Robert C. Dynes President, University of California
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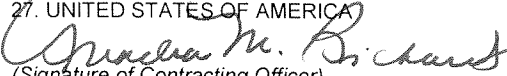
15B. TELEPHONE NO. (510) 987-0800 (Ronald A. Nelson)	15C. <input type="checkbox"/> CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE	17. SIGNATURE 	18. OFFER DATE 04/13/05
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AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION
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22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c) () <input type="checkbox"/> 41 U.S.C. 235(c) ()	23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified) N/A	▶	ITEM
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24. ADMINISTERED BY (If other than Item 7) U.S. Department of Energy The Berkeley Site Office 1 Cyclotron Road, MS90-1023 Berkeley, CA 94720	CODE	25. PAYMENT WILL BE MADE BY See Clause I.102	CODE
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NAME OF CONTRACTING OFFICER (Type or print) Aundra M. Richards	27. UNITED STATES OF AMERICA  (Signature of Contracting Officer)	28. AWARD DATE 4/19/05
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IMPORTANT - Award will be made on this Form or on Standard Form 26 or by other authorized official written notice.

In order to assure it can meet DOE's programmatic objectives for LBNL, the University makes the following clarifications and understandings that, pursuant to Clauses H.21 and H.41:

- (i) DOE intends to be contractually responsible for the costs of pension, other post retirement benefits and other benefits when earned (subject to DOE approved plan provisions) regardless of when the benefits are paid;
- (ii) if DOE determines that any UC pension or welfare benefit plan is not acceptable or is determined to be an unreasonable or otherwise unallowable cost, the University may create a separate site-specific plan;
- (iii) DOE intends to provide funds for LBNL pension benefits in the event of a pension plan shortfall following termination of the contract; and
- (iv) the collective bargaining approval requirements of H.21(c) apply only to a site-specific collective bargaining unit.

Based on the University's responses on February 23, 2005, to DOE's February 22, 2005 clarification questions regarding the University's four (4) clarifications and understandings above, and subject to the terms and conditions of this contract, the Parties are in agreement as follows:

- (a) The use of the phrase "when earned" in item (i) above does not mean or imply a change in how DOE reimburses the University for pension, other post retirement and other benefits; i.e., DOE will continue to reimburse the University on a pay-as-you-go basis. Furthermore, DOE has no objection to the University including such costs as liabilities without receiving reimbursement, i.e., account receivables, so long as the University can do so under all applicable financial and accounting standards.
- (b) With respect to item (ii) above, nothing in this contract precludes the University from creating a separate site-specific pension or welfare benefit plan. In such event, the parties agree to negotiate in good faith over any necessary modifications to the terms and conditions of this contract to effectuate such change.
- (c) With respect to item (iii) above, the University is not requesting DOE to make a lump sum payment for LBNL pension benefits in the event of a pension plan shortfall. The University expects payment for these benefits as they have received them in the past, i.e., on a pay-as-you-go basis.
- (d) With respect to item (iv) above, the last sentence of Clause H.21(c)(2) only applies to site-specific collective bargaining agreements; however, the notification provisions of Clause H.41(b)(1) through (b)(3) shall continue to apply in all cases.

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