

This document reflects the result of analyses, discussions and review by UCOP staff and PricewaterhouseCoopers (PwC) to date. The document is subject to change pending additional discussions with PwC; however, it represents the best information available to date.

**University of California
Governmental Accounting Standards Board (GASB) Statement No. 45, *Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions***

Issues Resolution Memo No. 45.5

(Issued August 15, 2007)

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

Background

UC provides retiree health benefits to eligible retired UC employees and their eligible dependents. Employees working at the DOE laboratories, including LBNL, continue as UC employees as long as the prime contract to manage the LBNL remains with the University. Thus, retired employees who worked at LBNL while managed by UC receive retiree health benefits under the University of California Group Insurance Regulations, §§ 6000-6011. The DOE, through the LBNL, provides funding to UC on a monthly basis, in arrears, for the actual costs incurred to provide retiree health benefits specifically for employees who have retired from the LBNL.

The University currently manages the LBNL for the DOE through the UC/DOE Prime Contract DE-AC02-05CH11231 (Prime Contract or Contract 31). Under the terms of the contract, the DOE makes payments to UC on a “pay-as-you-go” basis for actual costs incurred. There are no accumulated assets at UC to pay for the LBNL segment liabilities to satisfy the future obligations to the LBNL retirees for health care. LBNL retirees do not participate in the recently established Retiree Health Benefit Trust, which could become a vehicle for prefunding. The trust is an option only for locations that are assessed at a common rate to pay for retiree health care costs and expenses rather than actual costs.

An actuarial report is prepared annually to track the status of the LBNL segment liabilities for retiree health care costs, separate from the actuarial reports prepared for the health care costs for the rest of the University. The separate LBNL segment actuarial report provides the basis for the measurement of the LBNL segment liabilities for which the DOE is financially responsible.

Define Issues

Beginning July 1, 2007, the Governmental Accounting Standards Board (GASB) requires the UC to record the Annual Required Contribution (ARC) as an expense and also as a liability as benefits are earned, regardless of when they are paid. The financial accounting and reporting of the University's application of GASB Statement No. 45, *Accounting and Reporting by Employers for Postemployment Benefits Other Than Pensions* is dependent on a determination of whether the DOE is ultimately the financially responsible party for all retiree health costs specifically related to former employees who worked at the LBNL.

Conclusion

A review of the LBNL, Los Alamos National Laboratory and Lawrence Livermore National Laboratory 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 Pension IRM's 27.3.1, 27.3.2 and 27.3.3.

Similarly, UC's conclusion is, under the terms of the Prime Contract, the DOE is ultimately financially responsible for retiree health care costs specifically related to current and former employees who work, or worked, at the LBNL based upon the following:

- The UC/DOE Prime Contract obligates the DOE to pay for retiree health benefits accrued during a UC employee's employment at LBNL while managed by the University, and
- The DOE's obligation for retiree health care benefits under the contract provisions is not, and should not be thought to be, ambiguous; what is ambiguous is the methodology for reimbursing the University for such costs between the time of the contract termination and the date the last LBNL segment retiree and eligible dependent dies, and
- The DOE policies state that the agency is obligated to provide future funding for retiree health care 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, benefits will be continued for those who have earned such benefits, and
- The University and DOE clarified DOE's obligations with respect to pension and retiree health benefits in the executed acceptance of the University's offer in response to the DOE's Request For Proposal to manage and operate the LBNL, and
- The DOE acknowledges its obligation to provide future funding for contractors' postemployment benefit liabilities in the DOE's audited (KPMG) financial statements by recording the liabilities 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 ARC and net postemployment benefit other than pension ("OPEB") obligation associated with this specific group of active and retired LBNL employees without including the offsetting receivable from the DOE to satisfy the OPEB liabilities.

In support of the contractual obligations and other documentation outlined above, the DOE's approach to retiree health care has been clarified in both the Los Alamos National Laboratory and Lawrence Livermore National Laboratory contract termination transactions. The DOE has accepted its full financial responsibility and transferred that financial responsibility to the successor contractor, subject to reimbursement by the DOE. The University is not left with any financial responsibility.

Recommended Approach

This IRM addresses the financial responsibility for retiree health care for the LBNL segment and is not a discussion of the financial accounting and reporting that results from this conclusion.

See IRM 45.2.3 and 45.7 for a further discussion of the accounting and reporting for the DOE's legal responsibility for retiree health costs associated with the LBNL.

Authoritative Guidance

The University maintains an OPEB plan for retiree health benefits and therefore should follow the requirements outlined in GASB Statement No. 45, *Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions*. 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 retiree health plan.

Supporting Documentation

Contract 31 obligates the DOE to pay for benefits accrued by UC employees employed at the LBNL while under UC management.

Contract 31 establishes the University's responsibility under the contract for establishing benefits within certain parameters, the DOE's responsibility for approving the University's benefit plans throughout the term of the contract as an allowable cost, and post-contract financial responsibility for the continuing retiree health care benefit obligations associated with current and former LBNL employees. The Contract 31 can be located on the web at: <http://labs.ucop.edu/internet/comix/> and the pertinent sections H.21–Workforce Transition, Contractor Compensation, Benefits and Pension and H.41–Pension Plan are shown in Appendix 1.

Paragraph (d) 1 of section H.21 of the Prime Contract states, "The Contractor shall provide a total compensation package for all employees employed by the predecessor contractor at LBNL at expiration of the predecessor's contract who are hired by the Contractor for work under this Contract during the first six (6) months after the Contractor assumes responsibility for management and operation of the Laboratory with respect to salaries, health/welfare benefits, pensions comparable to that provided by the predecessor Contractor as of the date the Contractor assumes responsibility for management and operation of the Laboratory. The Contractor shall maintain the base salaries of the transferring workforce. Comparability shall be determined by the Contracting Officer in his/her sole discretion.

For all employees described above, the Contractor shall carry over the length of service credit and leave balances accrued as of the date of hire by the Contractor.

(1) Policies, Practices, and Procedures

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system including a compensation system self-assessment plan consistent with 48 CFR 31.205-6, and DEAR 970.3102-05-6, "Compensation for personal services," as applied to the DOE-approved standards in Appendix A. The Contractor's compensation system and methods shall be in accordance with 48 CFR 31.205-6 and DEAR 970.3102-05-6, fully documented, consistently applied, and acceptable to DOE.

Until DOE has certified the Contractor's compensation system, the Contractor shall submit the following to the Contracting Officer for a determination of cost reimbursement under the contract:

- (i) Any additional Compensation System self-assessment data requested by the Contracting Officer that may be needed to validate and approve the Compensation System.
- (ii) Any proposed major compensation program design changes prior to implementation.
- (iii) Annual Compensation Increase Plan (CIP).
- (iv) Individual compensation actions, in excess of \$168,000, including initial and proposed changes to base salary and or payments under an Executive Incentive Compensation Plan, which exceed this threshold.
- (v) Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk)

Upon certification of the Contractor's Compensation System, Contracting Officer approval of individual compensation actions will be required only for the Laboratory Director, Deputy Director(s), if any, and those other first tier reports to the aforementioned positions, as identified by the Contracting Officer."

Paragraph (d) 3 of section H.21 of the Prime Contract states, "The Contractor shall provide the Contracting Officer with the following reports with respect to salary and benefits:

- (i) Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.
- (ii) At the time of contract award and upon any change thereafter, a list of the top five most highly compensated executives and their salaries.

- (iii) Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the Department Workforce Information System (WFIS), compensation and benefits module.”

Paragraph (d) 4 of section H.21 of the Prime Contract states, “DOE will conduct periodic appraisals of Contractor performance with respect to compensation system implementation. Such appraisals when approved by the Contracting Officer, will be conducted by either DOE validation of Contractor self assessments of compensation system performance, or third party expert review.”

Subsection (e) of section H.21 of the Prime Contract states, “The program of employee pensions and other benefits employed by the Contractor shall support at a reasonable cost the effective recruitment and retention of a highly skilled workforce at LBNL. Cost reimbursement of benefit plans will be based on Contracting Officer approval of Contractor actions pursuant to an approved ‘Employee Benefits Value Study’ and an ‘Employee Benefits Cost Survey Comparison’. No presumption of allowability will exist when the Contractor implements a new benefits plan or makes changes to existing employee benefits plans until the Contracting Officer makes a determination of cost reimbursement for reasonable changes to the program. Unless required by State or Federal statute, funding in advance for post retirement benefits other than pensions (PRB) is not allowable.

Unless stated otherwise, or as directed by the Contracting Officer, within 30 days of award or extension, and annually thereafter, and prior to implementation of any benefit change, the Contractor shall submit the following materials to the Contracting Officer in advance for approval of application of the changes under the contract and for a determination as to whether the costs incurred are consistent with the Contractor's documented program plan and are deemed allowable pursuant to 48 CFR 31.205-6 as supplemented by DEAR 970.3102-05-6.

- (1) An evaluation of the Contractor’s Employee Benefits Program based on two professionally recognized performance measures:
 - (i) An Employee Benefits Value Study (ben-val) Measure, every two years, which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value study does not address post-retirement benefits (PRB) other than pension, the Contractor shall provide separate PRB cost and plan design data comparison with external benchmarks for nationally recognized and Contracting Officer approved survey sources and,
 - (ii) An Employee Benefits Cost Survey Comparison (cost survey) Method every year that analyzes the Contractor’s employee benefits cost on a per capita basis per full time equivalent employee and compares it with the cost reported by the U.S. Chamber of Commerce (CoC) Annual Employee Benefits Cost Survey or other Contracting Officer approved broad based national survey.

- (2) When net benefit value and/or per capita cost exceed the comparator group by more than 5 percent, submit corrective action plans, when requested by the Contracting Officer, to achieve a net benefit value and per capita cost not to exceed the comparator group by more than 5 percent.
- (3) As required by the Contracting Officer, submit an analysis of the specific plan costs that are above the per capita cost range and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range.
- (4) Implement corrective action plans determined to be reimbursable by the Contracting Officer to align employee benefit programs with the target in subparagraph (e)(2).
- (5) Annually submit the Report of Contractor Expenditures for Employee Supplemental Compensation.”

These contract provisions confirm that the LBNL employee benefits program developed by the University during the term of the Prime Contract, have been, and must continue to be, the subject of regular approvals by the DOE. The approval process governs even after termination of the contract as confirmed by subsection (i) of section H.41 of the Prime Contract, which states:

“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.”

The DOE's continuing obligation to pay for retiree health care benefits under the Prime Contract's provisions is not, and should not be thought to be, ambiguous; costs must be paid when incurred, regardless of when the benefits were accrued.

There are two very separate issues associated with the payment of OPEB costs:

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

This document focuses on the former for the purpose of providing support for recording a receivable from the DOE for retiree health care costs attributable to the LBNL segment.

The Prime Contract clearly gives the University a right to deferred revenue that should be recorded as a receivable to offset retiree health care liabilities attributable to the LBNL segment; whether the assets on hand make that receivable \$0 or \$x is determined by the actuarial report prepared for the LBNL segment. UC does not need to negotiate with the DOE at the expiration or termination of the contract over the fact of the DOE's obligation to pay for a proportionate share of UC's liabilities for retiree health care—all of the circumstances giving rise to the obligation exist at the end of each fiscal year. DOE agreed in the contract that allowable costs incurred in connection with the expiration or termination of the contract (including pension and retiree health care costs) that 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 its 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 that apply to Contract 31 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 the DOE is responsible for providing future funding. The DOE's internal regulations require contracting officers to assure that subsequent to any contract termination or expiration, benefits will be continued for those who have earned such benefits.

DOE policies demonstrate the continuing obligation of the DOE to UC to provide future funding sufficient to offset the related liability for benefits accrued during the term of the contract.

The DOE issues "Directives" that provide for how DOE contracting officers must view contracts with 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."

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 the DOE clarified the DOE's obligations with respect to pension and retiree health care benefits in the executed acceptance of the University's offer submitted in response to the DOE's Request For Proposals to manage and operate LBNL.

The image of the executed offer and acceptance is attached as Appendix 6. The relevant text relating to pension and other postretirement benefit 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.21:

- (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, the DOE acknowledges its future obligations for retiree health care benefits, although it retains some options regarding the timing and manner of meeting those obligations.

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

The DOE's September 30, 2006 financial statements, audited by KPMG, include a liability to contractors for pension and other actuarial liabilities, including retiree health care liabilities, 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 cost under the contracts includes reimbursement of annual contractor contributions to these pension plans. The Department's contractors also sponsor postretirement benefits other than pensions (PRB) consisting of predominantly postretirement health care benefits. The Department approves the contractors' pension and postretirement benefit plans and is ultimately responsible for the allowable costs of funding the plans."

"The Department follows SFAS No. 106, *Employers' Accounting for Postretirement Benefits Other Than Pensions*, for contractor employees for whom the Department has a continuing obligation. SFAS No. 106 requires that the cost of PRB [e.g., OPEB] be accrued during the years that the employees render service. As of September 30, 2006, and September 30, 2005

(unaudited), the measurement dates, the Department has an accrued PRB liability of \$9,707 million and \$9,041 million, respectively. Generally, the PRB plans are unfunded, and the Department's funding policy is to fund on a pay-as-you-go basis."

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 OPEB liabilities associated this specific group of retired employees without including the offsetting receivable from the DOE to satisfy these liabilities

Finally, it is reasonable to take the view that deferred revenue and a receivable from the DOE in lieu of an LBNL segment net OPEB obligation 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 that the DOE is obligated to provide continuing funding for retiree health benefits. Deferred revenue and a receivable that represents that obligation for a LBNL segment net OPEB obligation would result in the UC financial position being presented fairly.

Next Steps—Required Actions

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

APPENDIX 1: H.21 - Workforce Transition, Contractor Compensation, Benefits and Pension; and H.41 Pension Plan

H.21 - Workforce Transition, Contractor Compensation, Benefits and Pension

- (a) Clauses H.21, H.41, and Appendix A are adopted for the exclusive benefit and convenience of the parties hereto; nothing contained herein shall be construed as conferring any right of action or any other right or benefit upon past, present, or future employees of the Contractor, or upon any other third party.

(b) Employee Retention

Subject to the availability of funds, the Contractor shall offer employment to all employees who, as of the date of contract award, are in good standing and have LBNL “Career” or “Term” appointments, except as set forth in the following sentence. The Contractor is not required to offer employment to those “career” employees permanently assigned to the senior management positions reflected on the LBNL organization chart attached to Section L as Appendix 6. The Contractor may offer employment to said employees, as well as any other employees who are designated as senior management, in either their current positions or other positions, in the Contractor’s sole discretion. Nothing in this paragraph shall preclude the Contractor from separating employees when in its judgment there is just cause or it is otherwise appropriate to do so based on the employee’s performance or conduct.

(c) Labor Relations

- (1) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.
- (2) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor’s bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or retirement income plans or to any welfare benefit plans.

(d) Salary and Benefits

The Contractor shall provide a total compensation package for all employees employed by the predecessor contractor at LBNL at expiration of the predecessor’s contract who are hired by the Contractor for work under this Contract during the first six (6) months after the Contractor assumes responsibility for management and operation of the Laboratory with respect to salaries, health/welfare benefits, pensions comparable to that

provided by the predecessor Contractor as of the date the Contractor assumes responsibility for management and operation of the Laboratory. The Contractor shall maintain the base salaries of the transferring workforce. Comparability shall be determined by the Contracting Officer in his/her sole discretion.

For all employees described above, the Contractor shall carry over the length of service credit and leave balances accrued as of the date of hire by the Contractor.

(1) Policies, Practices, and Procedures

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system including a compensation system self-assessment plan consistent with 48 CFR 31.205-6, and DEAR 970.3102-05-6, "Compensation for personal services," as applied to the DOE-approved standards in Appendix A. The Contractor's compensation system and methods shall be in accordance with 48 CFR 31.205-6 and DEAR 970.3102-05-6, fully documented, consistently applied, and acceptable to DOE.

Until DOE has certified the Contractor's compensation system, the Contractor shall submit the following to the Contracting Officer for a determination of cost reimbursement under the contract:

- (i) Any additional Compensation System self-assessment data requested by the Contracting Officer that may be needed to validate and approve the Compensation System.
- (ii) Any proposed major compensation program design changes prior to implementation.
- (iii) Annual Compensation Increase Plan (CIP).
- (iv) Individual compensation actions, in excess of \$168,000, including initial and proposed changes to base salary and or payments under an Executive Incentive Compensation Plan, which exceed this threshold.
- (v) Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk)

Upon certification of the Contractor's Compensation System, Contracting Officer approval of individual compensation actions will be required only for the Laboratory Director, Deputy Director(s), if any, and those other first tier reports to the aforementioned positions, as identified by the Contracting Officer.

(2) Severance Pay

Severance pay benefits are not payable to an employee under this contract if the employee:

- (A) Voluntarily separates, resigns or retires from employment,

- (B) Is offered employment with a successor/replacement Contractor,
- (C) Is offered employment with a parent or affiliated company, or
- (D) Is discharged for cause. Service Credit for purposes of determining severance pay does not include any period of prior service at a DOE facility for which severance pay has been previously paid.

(3) Reporting Requirements

The Contractor shall provide the Contracting Officer with the following reports with respect to salary and benefits:

- (i) Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.
- (ii) At the time of contract award and upon any change thereafter, a list of the top five most highly compensated executives and their salaries.
- (iii) Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the Department Workforce Information System (WFIS), compensation and benefits module.
- (iv) A Self-Assessment of the total compensation program.

(4) Periodic Appraisals

DOE will conduct periodic appraisals of Contractor performance with respect to compensation system implementation. Such appraisals when approved by the Contracting Officer, will be conducted by either DOE validation of Contractor self assessments of compensation system performance, or third party expert review.

(e) Pension and Non-Pension Benefit Programs

The program of employee pensions and other benefits employed by the Contractor shall support at a reasonable cost the effective recruitment and retention of a highly skilled workforce at LBNL. Cost reimbursement of benefit plans will be based on Contracting Officer approval of Contractor actions pursuant to an approved "Employee Benefits Value Study" and an "Employee Benefits Cost Survey Comparison". No presumption of allowability will exist when the Contractor implements a new benefits plan or makes changes to existing employee benefits plans until the Contracting Officer makes a determination of cost reimbursement for reasonable changes to the program. Unless required by State or Federal statute, funding in advance for post retirement benefits other than pensions (PRB) is not allowable.

Unless stated otherwise, or as directed by the Contracting Officer, within 30 days of

award or extension, and annually thereafter, and prior to implementation of any benefit change, the Contractor shall submit the following materials to the Contracting Officer in advance for approval of application of the changes under the contract and for a determination as to whether the costs incurred are consistent with the Contractor's documented program plan and are deemed allowable pursuant to 48 CFR 31.205-6 as supplemented by DEAR 970.3102-05-6.

- (1) An evaluation of the Contractor's Employee Benefits Program based on two professionally recognized performance measures:
 - (ii) An Employee Benefits Value Study (ben-val) Measure, every two years, which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value study does not address post-retirement benefits (PRB) other than pension, the Contractor shall provide separate PRB cost and plan design data comparison with external benchmarks for nationally recognized and Contracting Officer approved survey sources and,
 - (ii) An Employee Benefits Cost Survey Comparison (cost survey) Method every year that analyzes the Contractor's employee benefits cost on a per capita basis per full time equivalent employee and compares it with the cost reported by the U.S. Chamber of Commerce (CoC) Annual Employee Benefits Cost Survey or other Contracting Officer approved broad based national survey.
- (2) When net benefit value and/or per capita cost exceed the comparator group by more than 5 percent, submit corrective action plans, when requested by the Contracting Officer, to achieve a net benefit value and per capita cost not to exceed the comparator group by more than 5 percent.
- (3) As required by the Contracting Officer, submit an analysis of the specific plan costs that are above the per capita cost range and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range.
- (4) Implement corrective action plans determined to be reimbursable by the Contracting Officer to align employee benefit programs with the target in subparagraph (e)(2).
- (5) Annually submit the Report of Contractor Expenditures for Employee Supplemental Compensation.

H.41 Pension Plan

(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

See following pages.

SOLICITATION, OFFER AND AWARD		1. THIS CONTRACT IS RATED ORDER UNDER DPAS (15 CFR 700)	▶	RATING N/A	PAGE OF 1	PAGES 2
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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			
X	A	SOLICITATION/CONTRACT FORM	1	X	I	CONTRACT CLAUSES	233
X	B	SUPPLIES OR SERVICES AND PRICES/COSTS	4	PART III - LIST OF DOCUMENTS, EXHIBITS, ATTACHMENTS			
X	C	DESCRIPTION/SPECS./WORK STATEMENT	18	X	J	LIST OF ATTACHMENTS	172
X	D	PACKAGING AND MARKING	2	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
X	E	INSPECTION AND ACCEPTANCE	2	X	K	REPS., CERTS, STATEMENTS OF OFFERORS	40
X	F	DELIVERIES OR PERFORMANCE	6	X	L	INSTRS., CONDS., NOTICES TO OFFERORS	104
X	G	CONTRACT ADMINISTRATION DATA	3	X	M	EVALUATION FACTORS FOR AWARD	8
X	H	SPECIAL CONTRACT REQUIREMENTS	57				

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	CODE	FACILITY The Regents of the University of California 1111 Franklin Street Oakland, CA 94607-5206 DUNS # of Offeror: 00-398-5512	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
-----------------------------------	------------	----------------------------------

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
---	--	---	------

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	25. PAYMENT WILL BE MADE BY See Clause I.102
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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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